

# EXHIBIT N

08:58AM

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,	)	CV-14-5344-BLF
	)	
PLAINTIFF,	)	SAN JOSE, CALIFORNIA
	)	
VS.	)	NOVEMBER 21, 2016
	)	
ARISTA NETWORKS, INC.,	)	VOLUME 2
	)	
DEFENDANT	)	PAGES 25-260
	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: DAVID A. NELSON  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

BY: DAVE NELSON  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, ILLINOIS 60661

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

09:01AM 1 THIS IS THE TIME I BELIEVE WE HAVE SET FOR THE DISCUSSION  
09:01AM 2 AND ARGUMENT ON THE PORTIONS OF ANALYTIC DISSECTION THAT THE  
09:02AM 3 COURT CAN COMPLETE WITHOUT EVIDENTIARY HEARING. AND THAT THE  
09:02AM 4 EVIDENTIARY HEARING REQUIRED WILL TAKE PLACE ALONG WITH THE  
09:02AM 5 TRIAL, WITH THE JURY PRESENT.

09:02AM 6 AND THAT BEFORE I FINALLY INSTRUCT THE JURY, WE WILL HAVE  
09:02AM 7 COMPLETED ALL OF THE ANALYTIC DISSECTION; IS THAT CORRECT?

09:02AM 8 MR. VAN NEST: THAT'S WHAT WE UNDERSTOOD, YOUR HONOR.

09:02AM 9 MR. NELSON: I BELIEVE THAT'S RIGHT.

09:02AM 10 I BELIEVE WE ALSO TALKED FRIDAY ABOUT MAYBE THEY WANTED  
09:02AM 11 SOME ADDITIONAL DISCUSSION ON THE DEFINITION OF THE WORK.

09:02AM 12 THE COURT: WELL, IT WOULD BE MY HOPE TODAY THAT WE  
09:02AM 13 COULD ALSO DEFINE WHAT THE WORKS ARE. AND OF COURSE THERE'S  
09:02AM 14 MORE THAN ONE THAN YOU ARE ASSERTING. AND I THINK THAT WILL  
09:02AM 15 HELP QUITE A BIT AS WE DISCUSS JURY INSTRUCTIONS.

09:02AM 16 YOU KNOW, WE'VE REALLY -- I'VE SET ASIDE ALL DAY TODAY AND  
09:02AM 17 TOMORROW. I DON'T KNOW WHAT WE WILL NEED. WHEN WE TURN TO  
09:02AM 18 JURY INSTRUCTIONS, WE WILL DO THAT IN CHAMBERS BECAUSE WE HAVE  
09:02AM 19 A LOT OF ROLL-UP-YOUR-SLEEVES KIND OF WORK TO DO THERE, AND I'M  
09:02AM 20 HOPING TO GET A PRETTY GOOD SET OF JURY INSTRUCTIONS BY THE END  
09:03AM 21 OF THE DAY TOMORROW, WITH THE EXCEPTION THAT A FEW THAT ARE  
09:03AM 22 STILL WORKS IN PROGRESS. BUT THEN WE HAVE A REALISTIC CHANCE  
09:03AM 23 OF GETTING THOSE HAMMERED OUT SO THAT THE JURY CAN START THEIR  
09:03AM 24 DELIBERATIONS AS WE HAD HOPED ON DECEMBER 13TH. SO THAT'S  
09:03AM 25 STILL OUR PLAN.

09:03AM 1 WITH THAT IN MIND, LET MY -- I'M NOT SURE HOW YOU HAD  
09:03AM 2 WANTED TO ORGANIZE THE DISCUSSION TUESDAY -- THE PAPER YOU  
09:03AM 3 PROVIDED TO ME, I KNOW THERE'S LOTS OF OTHER THINGS THAT YOU  
09:03AM 4 SENT ME ON THE THUMB DRIVE, AND OF COURSE THAT'S NOT ACCESSIBLE  
09:03AM 5 TO ME IN THE COURTROOM, I KNOW YOU WILL HELP ME THROUGH THAT.

09:03AM 6 IT SEEMS TO ME THAT PRIMARILY, CISCO'S IDENTIFICATION THE  
09:03AM 7 ALLEGED COPIED ELEMENTS IS ESSENTIAL HERE. AND WHAT I HAVE  
09:04AM 8 BEEN WORKING WITH IS THE JOINT SUBMISSION OF THE ITEMS THAT CAN  
09:04AM 9 BE SUBMITTED WITHOUT ARGUMENT THAT TRACK ARISTA'S RESPONSE TO  
09:04AM 10 CISCO'S SUBMISSION OF PROTECTABLE ELEMENTS.

09:04AM 11 AND SO MR. VAN NEST, I DON'T KNOW WHETHER YOU HAD INTENDED  
09:04AM 12 TO WALK THROUGH THAT LIST OR IF YOU HAVE A DIFFERENT WAY OF  
09:04AM 13 ORGANIZING THIS FOR ME TODAY.

09:04AM 14 MR. VAN NEST: I HAD A SLIDE HERE FOR SUGGESTION.  
09:04AM 15 AND THAT IS THAT WE START WITH DEFINING WHAT THE WORK AS A  
09:04AM 16 WHOLE IS.

09:04AM 17 THE COURT: OKAY.

09:04AM 18 MR. VAN NEST: REMEMBER THAT AT THE MOTION IN LIMINE  
09:04AM 19 SESSION WE HAD MOVED IN LIMINE THE QUESTION OF WHAT WAS  
09:04AM 20 ACTUALLY DISCLOSED. AND SO THAT WAS CARRIED OVER TO TRIAL.

09:04AM 21 SO WHAT WE HAVE DONE IS WE HAVE DIVIDED IT UP A LITTLE BIT.  
09:04AM 22 WE THINK THERE'S TWO ISSUES: WHAT WAS DISCLOSED AS THE  
09:04AM 23 COPYRIGHTED WORK, AND MR. FERRALL IS GOING TO ADDRESS THAT; AND  
09:04AM 24 WHETHER SOME SUBSET OF A COPYRIGHTED REGISTRATION IS ELIGIBLE  
09:04AM 25 TO BE THE WORK AS A WHOLE.

09:04AM 1 AND YOU HAD MENTIONED FRIDAY THAT YOU WERE FAMILIAR WITH  
09:04AM 2 THE LAW.

09:04AM 3 THE COURT: I HOPE I AM.

09:05AM 4 MR. VAN NEST: AND MR. KWUN WAS GOING TO HANDLE THAT.

09:05AM 5 SO WHAT I SUGGEST WE DO IS, START WITH MR. FERRALL, IS THE  
09:05AM 6 DISCOVERY ISSUES BECAUSE THEY ARE VERY IMPORTANT, AND THEN  
09:05AM 7 FOLLOW ON WITH THE DISCUSSION OF THE LAW AND THE LEGAL POINTS.  
09:05AM 8 EVEN IF YOUR HONOR WERE TO SAY, WELL, IT WAS DISCLOSED, THEN I  
09:05AM 9 THINK THERE'S A SECOND QUESTION WHICH IS, WHAT DOES THE LAW  
09:05AM 10 ALLOW IN TERMS OF A SUBSET TYPE OF APPROACH?

09:05AM 11 THE COURT: OKAY. AND I'M PERFECTLY HAPPY TO DO  
09:05AM 12 THAT.

09:05AM 13 I THINK THE BEST PLACE TO START OUT IS FOR CISCO TO STATE  
09:05AM 14 ON THE RECORD WHAT IT BELIEVES THE WORKS ARE THAT IT IS GOING  
09:05AM 15 FORWARD WITH.

09:05AM 16 MR. PAK.

09:05AM 17 MR. PAK: YES, YOUR HONOR. AND YOUR HONOR, I HAVE  
09:06AM 18 COPIES OF THE SLIDES.

09:06AM 19 THE COURT: AND THOSE ARE ALWAYS HELPFUL. THANK YOU.

09:06AM 20 AND PARDON ME, I MAY BE LOOKING AT THESE WHILE YOU ARE  
09:06AM 21 TALKING. I MAY NOT MAKE THE KIND OF EYE CONTACT THAT WOULD  
09:06AM 22 APPEAR THAT I'M LISTENING, BUT I'M DOING MY BEST.

09:06AM 23 MR. PAK: SO YOUR HONOR, WE HAVE PUT TOGETHER A  
09:06AM 24 SERIES OF SLIDES THAT WILL WALK US THROUGH THE DISCUSSION. I  
09:06AM 25 THINK IT WILL FOLLOW INTO THE FOLLOWING SETS OF ARGUMENTS.

09:06AM 1 ONE IS, AT A VERY HIGH LEVEL I KNOW YOUR HONOR HAS SEEN THE  
09:06AM 2 CASE LAW, BUT JUST TO REMIND EVERYONE ON THE RECORD WHAT THE  
09:06AM 3 LAW IS WITH RESPECT TO THE SEPARATE REGISTRATION OF USER  
09:06AM 4 INTERFACE VERSUS THE SOURCE CODE WHEN ONE TAKES A COMPUTER  
09:06AM 5 PROGRAM AND FILES THE REGISTRATION PAPERWORK WITH THE COPYRIGHT  
09:06AM 6 OFFICE. I WILL COVER THAT VERY BRIEFLY.

09:07AM 7 AND YOUR HONOR, I DO WANT TO GO THEN THROUGH THE DIFFERENT  
09:07AM 8 DISCLOSURES THAT WE MADE IN THE CASE. DIFFERENT STATEMENTS  
09:07AM 9 HAVE BEEN MADE BY THE EXPERTS ON BOTH SIDES. PARTICULARLY, I  
09:07AM 10 THINK WHAT'S REALLY IMPORTANT IS TO UNDERSTAND HOW ARISTA'S OWN  
09:07AM 11 EXPERTS HAVE UNDERSTOOD THE COPYRIGHTS AT ISSUE TO BE BECAUSE  
09:07AM 12 THAT BECOMES A FOUNDATION FOR A NUMBER OF OPINIONS AND SOME  
09:07AM 13 DEFENSES THAT ARISTA HAS RAISED.

09:07AM 14 SO I THINK ONCE WE UNDERSTAND THAT PICTURE, THEN I WILL  
09:07AM 15 STATE ON THE RECORD, YOUR HONOR, EXACTLY WHAT IT IS THAT WE ARE  
09:07AM 16 CLAIMING TO BE, IN THIS CASE, REALLY, THE FOUR OPERATING SYSTEM  
09:07AM 17 USER INTERFACES, HOW THEY WERE DISCLOSED, AND MAKE THAT VERY  
09:07AM 18 CLEAR ON THE RECORD.

09:07AM 19 THE COURT: THAT WILL BE VERY HELPFUL.

09:07AM 20 AND SO THAT -- I WANT MR. VAN NEST TO BE CLEARLY SPEAKING  
09:07AM 21 TO WHAT YOU ALLEGE THE WORKS TO BE SO THAT THE RECORD IS CLEAR  
09:07AM 22 FOR ALL OF US.

09:07AM 23 MR. PAK: GREAT.

09:07AM 24 SO I THINK THE STARTING POINT, YOUR HONOR, IS THE CASE OF  
09:07AM 25 MANUFACTURERS TECH V. CAMS, THIS IS CONNECTICUT CASE IN 1989.

09:08AM 1 THE COURT LOOKED AT ALL OF THE VARIOUS POLICY ARGUMENTS AND  
09:08AM 2 WHAT HAPPENED WITH RESPECT TO THE CHANGE IN POLICY AT THE  
09:08AM 3 COPYRIGHT OFFICE.

09:08AM 4 AND WHAT THIS CASE HOLDS IS THAT THIS COURT ADOPTS THE  
09:08AM 5 APPROACH TO TREAT THE SINGLE REGISTRATION OF THE COMPUTER  
09:08AM 6 PROGRAM AS ACCOMPLISHING TWO INTERRELATED YET DISTINCT  
09:08AM 7 REGISTRATIONS.

09:08AM 8 ONE OF THE PROGRAM ITSELF AND ONE OF THE SCREEN DISPLAYS OR  
09:08AM 9 THE USER INTERFACE OF THAT PROGRAM. AND IT ALSO RECOGNIZES  
09:08AM 10 THAT A COMPUTER PROGRAM AND ITS SCREEN DISPLAYS ARE, FOR  
09:08AM 11 COPYRIGHT PURPOSES, FUNDAMENTALLY DISTINCT.

09:08AM 12 AND I THINK IF YOUR HONOR READS THAT OPINION, AND THERE ARE  
09:08AM 13 A NUMBER OF DISTRICT COURTS THAT HAVE FOLLOWED THIS APPROACH,  
09:08AM 14 THE COURT REALLY ADOPTS MULTIPLE BASIS FOR ITS POSITION.

09:08AM 15 ONE IS JUST THE PRACTICAL REALITY THAT ITS COMPUTER  
09:08AM 16 PROGRAMS BECOME MORE COMPLICATED. THESE PROGRAMS ARE  
09:08AM 17 GENERATING, LITERALLY, HUNDREDS OF THOUSANDS OF SCREEN SHOTS,  
09:09AM 18 OR MILLIONS POTENTIALLY, DEPENDING ON THE COMPLEXITY OF THE  
09:09AM 19 PROGRAM.

09:09AM 20 AND PRIOR TO THE COPYRIGHT POLICY CHANGE, AS A COMPUTER  
09:09AM 21 PROGRAM, YOU COULD EITHER REGISTER THE CODE OR YOU COULD ALSO  
09:09AM 22 SEPARATELY REGISTER THE SCREEN DISPLAYS. BUT AS THE NUMBER OF  
09:09AM 23 SCREEN DISPLAYS INCREASED, IT BECAME PRACTICALLY IMPOSSIBLE TO  
09:09AM 24 REGISTER ALL THE DIFFERENT POSSIBLE SCREENS. AND SOME OF THESE  
09:09AM 25 SCREENS DEPENDS ON HOW YOU THE USER INTERACTS WITH THE SYSTEM.

09:09AM 1 SO THAT WAS ALSO A RECOGNITION IN THIS ORDER THAT WHEN YOU  
09:09AM 2 HAVE THE USER PROVIDING INPUT, AND THAT'S PART OF WHAT YOU ARE  
09:09AM 3 SEEING ON THE SCREEN, IT REALLY DOES BECOME VERY, VERY  
09:09AM 4 DIFFICULT TO TRY TO REGISTER ALL THE DIFFERENT PERMUTATIONS.

09:09AM 5 THERE'S ALSO A BASIC, I THINK A POLICY REASON TO DO THIS,  
09:09AM 6 WHICH IS THE COURT RECOGNIZED THAT THE SAME USER SCREEN COULD  
09:09AM 7 BE IMPLEMENTED USING DIFFERENT CODE. AND IN FACT, THERE'S SUCH  
09:09AM 8 A PROLIFERATION OF DIFFERENT TYPE OF PROGRAMMING LANGUAGES,  
09:10AM 9 PROGRAMMING TECHNIQUES THAT, FROM A USER PERSPECTIVE, YOU COULD  
09:10AM 10 HAVE AN IDENTICAL PROGRAM IN TERMS OF THE USER EXPERIENCE  
09:10AM 11 THAT'S BEEN IMPLEMENTED USING, FOR EXAMPLE THE C++ PROGRAM  
09:10AM 12 LANGUAGE VERSUS JAVA VERSUS DIFFERENT KINDS OF LIBRARIES AND  
09:10AM 13 TOOLS.

09:10AM 14 SO THE RECOGNITION WAS THAT WE SHOULDN'T ALLOW THE SAME  
09:10AM 15 PROGRAM EFFECTIVELY TO BE CLONED SIMPLY BECAUSE THE INFRINGER  
09:10AM 16 HAD USED A DIFFERENT PROGRAMMING LANGUAGE OR A SET OF DIFFERENT  
09:10AM 17 LIBRARY TOOLS. SO THAT, I THINK, WAS ALSO PART OF THIS COURT'S  
09:10AM 18 OPINION.

09:10AM 19 JUST TO BE CLEAR, THAT'S NOT THE ONLY COURT, THIS IS ON  
09:10AM 20 SLIDE 3, WE HAVE CITED A NUMBER OF CASES, CLARITY SOFTWARE  
09:10AM 21 CASE, FROM PENNSYLVANIA THAT QUOTES AND RELIES ON CAMS, AND  
09:10AM 22 THEY RECOGNIZED THE SAME LEGAL PRINCIPLE AND POLICY BASIS FOR  
09:10AM 23 THIS DECISION.

09:10AM 24 WE HAVE THE JAMISON CASE FROM THE EASTERN DISTRICT OF NEW  
09:10AM 25 YORK. THE HARBOR SOFTWARE CASE FROM THE SOUTHERN DISTRICT OF



09:10AM 1 NEW YORK, AND ALSO THE NAPOLI CASE WHICH CAME OUT OF THE  
09:10AM 2 NORTHERN DISTRICT --

09:11AM 3 THE COURT: NO COURTS IN THE NINTH CIRCUIT HAVE HAD  
09:11AM 4 THE OCCASION TO RULE ON THIS?

09:11AM 5 MR. PAK: I THINK THE NINTH CIRCUIT HASN'T, TO MY  
09:11AM 6 KNOWLEDGE, AT THE DISTRICT COURT LEVEL, HAVE DEALT WITH THIS  
09:11AM 7 PARTICULAR ISSUE. BUT OBVIOUSLY WE HAVE CASES LIKE THE  
09:11AM 8 SYNOPSIS CASE AND OTHER CASES THAT HAVE FOCUSED JUST ON THE  
09:11AM 9 USER INTERFACE ELEMENTS.

09:11AM 10 THE COURT: WHAT WAS THE DEFINITION OF THE WORK IN  
09:11AM 11 THE SYNOPSIS CASE.

09:11AM 12 MR. PAK: I BELIEVE IT WAS THE COMMAND SET AND THE  
09:11AM 13 SYNTAX, THAT WAS THE DEFINITION OF THE WORK.

09:11AM 14 THE COURT: THAT WOULD BE A SUBSET OF THE USER  
09:11AM 15 INTERFACE?

09:11AM 16 MR. PAK: I BELIEVE SO.

09:11AM 17 THE COURT: YOU WEREN'T INVOLVED IN THAT CASE?

09:11AM 18 MR. PAK: I WAS NOT INVOLVED IN THE SYNOPSIS CASE SO  
09:11AM 19 I APOLOGIZE, I'M GOING OFF OF WHAT I HAD JUST READ.

09:11AM 20 THE COURT: I DIDN'T BELIEVE YOU HAD BEEN INVOLVED IN  
09:11AM 21 IT BUT YOU HAVE OBVIOUSLY STUDIED THE DOCKET.

09:11AM 22 MR. PAK: I HAVE STUDIED THE DOCKET, BUT THERE MAY BE  
09:11AM 23 THINGS IN THE CONFIDENTIAL RECORD THAT WE DON'T HAVE ACCESS TO.

09:11AM 24 THE NAPOLI CASE, YOUR HONOR, THAT WAS VACATED DUE TO A  
09:11AM 25 SETTLEMENT AGREEMENT. THERE WAS NO SUBSTANTIVE ANALYSIS OR

09:11AM 1 OVERTURNING OF THAT DECISION.

09:11AM 2 THE COURT: AND THE NAPOLI CASE IS THE ONE YOU HAVE  
09:11AM 3 CITED, I THINK.

09:12AM 4 MR. PAK: THAT'S RIGHT.

09:12AM 5 AND WE HAVE ALSO CITED THE MANUFACTURERS TECH CASE. THE  
09:12AM 6 NAPOLI CASE ACTUALLY CITES THE MANUFACTURERS TECH CASE AND  
09:12AM 7 MAKES IT PART OF ITS HOLDING AS WELL.

09:12AM 8 SO ON SLIDE 4, YOUR HONOR, I THINK WE ARE ALL IN AGREEMENT  
09:12AM 9 NOW THAT THE ACT OF REGISTERING A COPYRIGHT DOESN'T DEFINE THE  
09:12AM 10 WORK, NECESSARILY, AND THAT'S FOR MULTIPLE REASONS.

09:12AM 11 COPYRIGHT BECOMES PART OF THE WORK OR THE WORK BECOMES  
09:12AM 12 PROTECTED BY COPYRIGHT AT THE TIME OF CREATION OF THAT WORK.  
09:12AM 13 AND THE REGISTRATION REALLY IS A STANDING ISSUE AS TO WHETHER  
09:12AM 14 YOU COULD SUE ON THAT COPYRIGHTED WORK BY MAKING THE FILINGS  
09:12AM 15 WITH THE REGISTRATIONS.

09:12AM 16 AND EVEN ARISTA ACKNOWLEDGES IN ITS BRIEF AT ECF 635,  
09:12AM 17 PAGE 2, FOR EXAMPLE, CISCO CAN ASSERT ITS SEPARATE MANUALS,  
09:12AM 18 INDEPENDENT DOCUMENTS AS DISCREET WORKS, ALTHOUGH THEY WERE  
09:12AM 19 REGISTERED ALONG WITH THE OPERATING SYSTEMS.

09:12AM 20 SO THERE WILL BE SOME DISCUSSION, I BELIEVE, ABOUT VARIOUS  
09:13AM 21 DISCOVERY RESPONSES OR STATEMENTS BY WITNESSES AND EXPERTS AS  
09:13AM 22 TO WHAT WAS IT THAT WAS ACTUALLY FILED WITH THE COPYRIGHT  
09:13AM 23 OFFICE.

09:13AM 24 AND I THINK IT'S FACTUALLY CORRECT TO SAY THAT WHAT WE  
09:13AM 25 FILED WERE THE OPERATING SYSTEM-RELATED DOCUMENTS AS WELL AS

09:13AM 1 THE SOURCE CODE. THAT'S THE -- WHAT WAS THE REGISTERED WORK IN  
09:13AM 2 THE SENSE OF REGISTRATION.

09:13AM 3 THE COURT: SURE.

09:13AM 4 AND NO ONE -- ARISTA DOESN'T CONTEST THAT THE IOS IS  
09:13AM 5 COPYRIGHTED, SUBJECT TO A REGISTRATION.

09:13AM 6 MR. PAK: THAT'S RIGHT, YOUR HONOR.

09:13AM 7 AND I THINK THE --

09:13AM 8 THE COURT: AND EACH OF ITS VERSIONS, OF COURSE.

09:13AM 9 MR. PAK: THAT'S RIGHT.

09:13AM 10 AND SO ULTIMATELY WHAT CISCO IS CONTENDING IN THIS CASE,  
09:13AM 11 WHAT WE ARE CONTENDING, YOUR HONOR, IS THAT THAT ACT OF  
09:13AM 12 REGISTERING THE OPERATING SYSTEM, ALONG WITH THE DOCUMENTS,  
09:13AM 13 GAVE RISE TO A NUMBER OF DISTINCT REGISTRATION FOR PURPOSES OF  
09:13AM 14 ENFORCEMENT OR LITIGATION, THAT WE CAN THEN USE THAT  
09:13AM 15 REGISTRATION AS A BASIS TO ASSERT, FOR EXAMPLE, THE  
09:13AM 16 DOCUMENT-BASED COPYRIGHTS THAT WE HAVE. WE COULD ALSO CHOOSE  
09:13AM 17 TO ASSERT THE USER INTERFACE RELATED COPYRIGHTS THAT WE HAVE.

09:14AM 18 AND IF THE CASE INVOLVED SOURCE CODE COPYING, WE COULD HAVE  
09:14AM 19 ALSO ASSERTED THE SOURCE CODE COPYING COPYRIGHTS AS WELL. BUT  
09:14AM 20 THAT THESE ARE A BUNDLE OF RIGHTS THAT WE HAVE, AND WE COULD  
09:14AM 21 CHOOSE TO SELECT -- WE COULD CHOOSE TO ASSERT ALL OF THEM  
09:14AM 22 TOGETHER OR IN INDIVIDUAL PIECEMEAL FASHION.

09:14AM 23 THE COURT: WELL, IT SEEMS THAT ARISTA ARGUES THAT  
09:14AM 24 THAT'S THE OPERATING SYSTEM AS A WHOLE, WHICH WOULD INCLUDE  
09:14AM 25 BOTH THE SOURCE CODE AND THE USER INTERFACE. SO I DON'T THINK

09:14AM 1 THERE'S ANY QUESTION THAT THE USER INTERFACE IS PROTECTED IN  
09:14AM 2 THE REGISTRATIONS, IT'S JUST WHETHER IT CAN BECOME IT'S OWN  
09:14AM 3 WORK SEPARATE FROM THE SOURCE CODE.

09:14AM 4 MR. PAK: THAT'S CORRECT, YOUR HONOR.

09:14AM 5 THE COURT: AND IT DOESN'T SEEM LIKE IT'S THAT  
09:14AM 6 DIFFICULT A DECISION HERE.

09:14AM 7 MR. PAK: I DON'T THINK SO, YOUR HONOR.

09:14AM 8 I THINK WHEN YOU LOOK AT THE LAW MADE, AND I'M SURE WE WILL  
09:14AM 9 HEAR FROM COUNSEL FOR ARISTA, BUT SETTING ASIDE SOME POLICY  
09:14AM 10 STATEMENTS FROM THE COPYRIGHT OFFICE WHICH CAN BE INTERPRETED  
09:14AM 11 IN A NUMBER OF DIFFERENT WAYS, I DON'T THINK THERE'S BEEN ANY  
09:14AM 12 CASE LAW CITED BY ARISTA THAT REALLY CONTRADICTS THIS  
09:14AM 13 MANUFACTURING TECH LINE OF CASES AND THE WAY THE DISTRICT  
09:15AM 14 COURTS HAVE TREATED USER INTERFACE AS A SEPARATE COPYRIGHTABLE  
09:15AM 15 WORK.

09:15AM 16 SO REALLY, I THINK PART OF THE DISCUSSION WE ARE HAVING IS  
09:15AM 17 REALLY THE DISCOVERY PROCESS AND WHAT CISCO HAS ALLEGED FROM  
09:15AM 18 THE VERY BEGINNING OF THE CASE IN TERMS OF FILING OF THE  
09:15AM 19 COMPLAINT TO THE DISCOVERY RESPONSES THAT WERE MADE, TO THE  
09:15AM 20 EXPERT OPINIONS THAT WERE RENDERED. AND I THINK IMPORTANTLY,  
09:15AM 21 WHAT WERE THE DEFENSES ARISTA HAS ADVANCED IN THIS CASE, BASED  
09:15AM 22 ON THE DISCLOSURES CISCO MADE.

09:15AM 23 AND AS YOUR HONOR KNOWS, RULE 26 IS REALLY A DISCOVERY  
09:15AM 24 NOTICE RULE, AND THE IDEA IS HAVE I REASONABLY OR FAIRLY PUT  
09:15AM 25 THE OTHER SIDE ON NOTICE OF MY THEORIES. I THINK WE ALL

09:15AM 1 RECOGNIZE THAT YOU DON'T HAVE TO SPELL OUT IN EXACTLY THE SAME  
09:15AM 2 WAY, YOUR CLAIMS, OR USE EXACTLY THE SAME TYPE OF EVIDENCE AS  
09:15AM 3 YOU WOULD PRESENT AT TRIAL. THE REAL QUESTION IS, HAVE WE PUT  
09:15AM 4 THE OTHER SIDE FAIRLY ON NOTICE THAT WE, CISCO, HAVE BELIEVED  
09:16AM 5 THAT COPYRIGHTABLE USER INTERFACE, OR SOMETIMES WE CALL IT THE  
09:16AM 6 CLI, IS SOMETHING THAT IS DISTINCT AND IT'S SOMETHING WE  
09:16AM 7 BELIEVE WAS COPIED AND SOMETHING THAT WAS COPYRIGHTED.

09:16AM 8 SO I WOULD LIKE TO START ON SLIDE 5, REALLY, FROM THE PUNCH  
09:16AM 9 LINE, WHICH IS, LET'S LOOK AT THE SWORN OPINIONS OF THEIR TWO  
09:16AM 10 EXPERTS IN THIS CASE, THE TWO PRIMARY EXPERTS.

09:16AM 11 FIRST OF ALL, WE START WITH MS. CATE ELSTEN WHO IS ARISTA'S  
09:16AM 12 DAMAGES OTHER EXPERT. AND I'M QUOTING FROM ELSTEN REBUTTAL  
09:16AM 13 REPORT AT PAGE 92 WHICH WAS FILED IN JULY OF 2016.

09:16AM 14 AS STATED IN SECTION 3(C) (1) (B) OF THIS REPORT, I  
09:16AM 15 UNDERSTAND THAT THE COPYRIGHTS AT ISSUE DO NOT RELATE TO THE  
09:16AM 16 IMPLEMENTATION OF THE CLI. WHICH IS EXECUTED BY UNDERLYING  
09:16AM 17 SOURCE CODE, NOT IN DISPUTE IN THIS MATTER.

09:17AM 18 SO IT CANNOT BE ANYMORE CLEAR WHAT SHE SAID. SHE SAID THE  
09:17AM 19 COPYRIGHTS AT ISSUE DO NOT CONCERN THE SOURCE CODE.

09:17AM 20 THEN SHE GOES ON TO SAY THAT THE ARISTA EOS SOURCE CODE WAS  
09:17AM 21 INDEPENDENTLY DEVELOPED BY ARISTA'S ENGINEERS. AND THE SECOND  
09:17AM 22 AMENDED COMPLAINT DOES NOT ALLEGE THAT ARISTA COPIED ANY OF THE  
09:17AM 23 CLI SOURCE CODE.

09:17AM 24 NOW THIS IS NOT A STATEMENT IN ISOLATION OR IN A VACUUM.  
09:17AM 25 THE REASON WHY SHE'S MAKING THIS STATEMENT SO CLEARLY AS SHE

09:17AM 1 HAS, AS YOUR HONOR KNOWS, A DISGORGEMENT OPINION. SO HER JOB  
09:17AM 2 ON BEHALF OF ARISTA AS A DAMAGES EXPERT IS TO APPORTION OUT  
09:17AM 3 WHAT SHE BELIEVES IS THE VALUE OF THE COPYRIGHTED WORK AT ISSUE  
09:17AM 4 VERSUS OTHER TECHNOLOGIES THAT WERE DEVELOPED BY ARISTA,  
09:17AM 5 SETTING ASIDE THE COPYRIGHTED WORK.

09:17AM 6 SO IN ORDER TO DO THAT DISGORGEMENT ANALYSIS, WHAT SHE DOES  
09:17AM 7 IS SHE VALUES THE CLI OR THE USER INTERFACE AND SAYS, THAT IS  
09:17AM 8 WORTH, FOR EXAMPLE AT THE BOTTOM HERE, \$16.4 MILLION, IN HER  
09:18AM 9 OPINION.

09:18AM 10 AND THEN HE SAYS THE REST OF THE PROFITS THAT ARISTA HAS  
09:18AM 11 GAINED BY SELLING THE EOS SOFTWARE AND THE CODE AND THE  
09:18AM 12 SWITCHES SHOULD BE APPORTIONED OUT.

09:18AM 13 SO TWO -- SO THIS IS A VERY IMPORTANT PART OF HER  
09:18AM 14 APPORTIONMENT OR DISGORGEMENT ANALYSIS IS TO BE ABLE TO TREAT  
09:18AM 15 THE CLI AS A SEPARATE COPYRIGHTABLE WORK SO THEN SHE CAN TURN  
09:18AM 16 AROUND AND THEN SAY THESE OTHER THINGS ARE NOT AT ISSUE IN THIS  
09:18AM 17 CASE, SHOULD BE APPORTIONED OUT.

09:18AM 18 SO WE SEE THAT OPINION STATED ON THE VERY NEXT PAGE, ELSTEN  
09:18AM 19 REBUTTAL REPORT 92 TO 93, "BASED ON CURRENTLY AVAILABLE  
09:18AM 20 INFORMATION IN MY ANALYSIS, IN CONSIDERATIONS AS OUTLINED  
09:18AM 21 ABOVE, I HAVE CONCLUDED THAT THE PORTION OF ARISTA'S U.S.  
09:18AM 22 SWITCH PROFITS FROM DECEMBER 2011 THROUGH MARCH 2016, MAY BE  
09:18AM 23 REASONABLY CONSIDERED ATTRIBUTABLE TO THE CLI IS  
09:18AM 24 \$16.4 MILLION."

09:18AM 25 AND THEN SHE SAYS, "FURTHER APPORTION MAY BECOME POSSIBLE

09:19AM 1 BASED ON THE COURT'S RULING AS TO WHAT PORTIONS OF THE ARISTA  
09:19AM 2 EOS CLI ARE COVERED BY THE COPYRIGHTS AT ISSUE. AND SUCH  
09:19AM 3 APPORTIONMENT MAY HAVE A MATERIAL IMPACT ON THE FINAL NUMBER."

09:19AM 4 IT'S VERY CLEAR, SHE'S ALREADY DONE THE APPORTIONMENT BASED  
09:19AM 5 ON THE USER INTERFACE AS A SEPARATELY COPYRIGHTABLE WORK. AND  
09:19AM 6 THEN SHE'S SAYING BASED ON WHAT WE DO WITH DISSECTION, THAT SHE  
09:19AM 7 MAY HAVE FURTHER OPINIONS FOR APPORTIONMENT BASED ON THAT  
09:19AM 8 OPINION.

09:19AM 9 WE ALSO HAVE PROFESSOR JOHN BLACK, WHO IS SITTING HERE IN  
09:19AM 10 THE COURTROOM, AND HE IS ARISTA'S TECHNICAL EXPERT. AND DOCTOR  
09:19AM 11 BLACK ALSO MAKES THE SAME STATEMENTS ABOUT WHAT IS THE  
09:19AM 12 COPYRIGHTABLE WORK AT ISSUE. THIS IS DOCTOR BLACK, JUNE 3RD,  
09:19AM 13 2016. AND IN THAT REPORT HE'S PROVIDING A NUMBER OF OPINIONS  
09:19AM 14 AND HE SAYS, "THE ASPECTS OF THE CISCO CLI OVER WHICH CISCO  
09:19AM 15 ASSERTS COPYRIGHT PROTECTION IN THIS LITIGATION," AND THEN HE  
09:20AM 16 GOES ON TO SAY, "NAMELY THE ASSERTED COMMAND MODES, PROMPTS,  
09:20AM 17 COMMANDS, COMMAND HIERARCHIES AND COMMAND RESPONSES."

09:20AM 18 AND WHY DOES DOCTOR BLACK SAY THAT? AGAIN HE'S NOT SAYING  
09:20AM 19 THAT IN ISOLATION, HE'S SAYING IT TO SUPPORT ONE OF HIS MAJOR  
09:20AM 20 OPINIONS IN THIS CASE, AND THAT HAS TO DO WITH THE  
09:20AM 21 TRANSFORMATIVE USE.

09:20AM 22 SO DOCTOR BLACK, AS ARISTA'S TECHNICAL EXPERT, WAS TASKED  
09:20AM 23 WITH THE QUESTION OF ANALYZING, WAS THERE A TRANSFORMATION OF  
09:20AM 24 THE COPYRIGHTED WORK AT ISSUE WHEN ARISTA IMPLEMENTED IT USING  
09:20AM 25 DIFFERENT CODE?

09:20AM 1 SO AGAIN, THIS IS IN THE SAME REPORT, PAGE -- OR  
09:20AM 2 PARAGRAPH 673, HE SAYS, "I HAVE TAKEN -- UNDERTAKEN ON THE  
09:20AM 3 EVALUATION OF THE PURPOSE AND CHARACTER OF THE USE OF THE  
09:20AM 4 ASSERTED CLI ASPECTS IN RELATION TO THE REGISTERED WORKS. IN  
09:20AM 5 PARTICULAR, I HAVE CONSIDERED WHETHER THE ALLEGED INFRINGEMENT  
09:20AM 6 IS A TRANSFORMATIVE USE OF THE ASSERTED PROTECTED EXPRESSION.

09:21AM 7 BASED UPON ALL OF MY OBSERVATIONS SET FORTH ABOVE, IT IS MY  
09:21AM 8 OPINION THAT ARISTA'S ALLEGED USE OF THE ASSERTED CLI ASPECTS  
09:21AM 9 IS TRANSFORMATIVE BECAUSE OF THE FUNDAMENTALLY DIFFERENT AND  
09:21AM 10 NOVEL ARISTA HARDWARE AND SOFTWARE THAT ARISTA DEVELOPED  
09:21AM 11 INDEPENDENTLY, AND BECAUSE THE ASSERTED CLI ASPECTS ARE MERELY  
09:21AM 12 A MEANS OF ACCESSING OR CONTROLLING SOME OF THAT INNOVATIVE  
09:21AM 13 TECHNOLOGY."

09:21AM 14 SO AGAIN, HE MAKES A DISTINCTION BETWEEN THE USER INTERFACE  
09:21AM 15 AND THE CODE TO BE ABLE TO SAY THE COPYRIGHTED WORK AT ISSUE IS  
09:21AM 16 THE USER INTERFACE. IT IS HIS TECHNICAL OPINION THAT BECAUSE  
09:21AM 17 ARISTA IMPLEMENTED THAT USER INTERFACE USING DIFFERENT CODE,  
09:21AM 18 DIFFERENT OPERATING SYSTEM ARCHITECTURE WITH DIFFERENT FEATURES  
09:21AM 19 MAY HAVE DIFFERENT CHARACTERISTICS.

09:21AM 20 THE COURT: WELL, ISN'T THERE A DISTINCTION BETWEEN  
09:21AM 21 THE ASSERTED ELEMENTS THAT YOU CLAIM WERE COPIED AND THE WORK?

09:21AM 22 MR. PAK: TRUE, YOUR HONOR.

09:22AM 23 THE COURT: SO THE ASSERTED ELEMENTS CAN COME FROM  
09:22AM 24 THE USER INTERFACE OR FROM THE LARGER OPERATING SYSTEM.

09:22AM 25 AND I DO NOT THINK DOCTOR BLACK SPEAKS TO EITHER, PERHAPS



09:22AM 1 MS. ELSTEN DOES MORE DIRECTLY IN HER OPINION ON DISGORGEMENT,  
09:22AM 2 BUT THIS ONE I'M NOT ACTUALLY FINDING SUPPORTIVE OF YOUR  
09:22AM 3 ARGUMENT.

09:22AM 4 MR. PAK: EXCEPT, YOUR HONOR, THE NATURE OF THE  
09:22AM 5 TRANSFORMATIVE ANALYSIS IS ABOUT NOT NECESSARILY THE  
09:22AM 6 TRANSFORMATION OF WHAT IS BEING ASSERTED IN TERMS OF  
09:22AM 7 PROTECTABLE ELEMENTS. THE TRANSFORMATIVE ARGUMENT IS WHETHER  
09:22AM 8 THE COPYRIGHTED WORK HAS BEEN TRANSFORMED OR NOT.

09:22AM 9 AND SO ALTHOUGH HIS LANGUAGE --

09:22AM 10 THE COURT: THAT'S NOT WHAT HE SAYS.

09:22AM 11 MR. PAK: RIGHT, RIGHT. BUT IN TERMS OF THE LEGAL  
09:22AM 12 FRAMEWORK, WHAT THE DEFENSE IS, IS HAVE I TRANSFORMED THE  
09:22AM 13 COPYRIGHTED WORK IN A WAY THAT IS TRANSFORMATIVE COMPARED TO  
09:22AM 14 HOW THE COPYRIGHTED WORK WAS USED BY THE COPYRIGHT ONLY.

09:22AM 15 SO ALTHOUGH I AGREE WITH YOUR HONOR THAT DOCTOR ELSTEN'S  
09:22AM 16 LANGUAGE IS MUCH MORE CLEAR THAT THE COPYRIGHTED WORK AT ISSUE  
09:23AM 17 IS THE CLI, DOCTOR BLACK'S OPINIONS AND THE WAY HE THINKS ABOUT  
09:23AM 18 THE USER INTERFACE AS BEING DIFFERENT FROM THE CODE FOR THE  
09:23AM 19 TRANSFORMATIVE ARGUMENTS ALSO SUPPORTS HIS POSITION.

09:23AM 20 NOW WHY ARE THE TWO EXPERTS FROM ARISTA SAYING THIS?  
09:23AM 21 BECAUSE REALLY, CISCO HAS BEEN PRETTY CLEAR FROM THE VERY  
09:23AM 22 BEGINNING OF THIS CASE. AND WE CAN SEE THAT FROM THE VERY  
09:23AM 23 FIRST COMPLAINT THAT WE FILED. THE LANGUAGE I'M ABOUT TO WALK  
09:23AM 24 YOU THROUGH IS ALSO CARRIED THROUGH IN THE VARIOUS AMENDED  
09:23AM 25 COMPLAINTS. THIS IS ON SLIDE 7.

09:23AM 1 AT THE VERY BEGINNING OF THE COMPLAINT WE TALKED ABOUT THE  
09:23AM 2 CLI AS THE USER INTERFACE BY WHICH USERS OF CISCO'S PRODUCTS  
09:23AM 3 COMMUNICATE WITH THE PRODUCT. THIS IS ON PARAGRAPH 27.

09:23AM 4 PARAGRAPH 7 OF THE COMPLAINT, WE ALLEGE THAT ARISTA  
09:23AM 5 DELIBERATELY AND REPEATEDLY ENGAGED IN EXTENSIVE COPYING IN  
09:23AM 6 ORDER TO COMPETE UNFAIRLY WITH CISCO, AND PUBLICLY TOUTS THAT  
09:23AM 7 ITS COPYING OF CISCO'S CLI MAKE ITS EASIER FOR CISCO CUSTOMERS  
09:24AM 8 TO SWITCH.

09:24AM 9 AND ALSO IN THE SAME COMPLAINT, YOUR HONOR, WE IDENTIFIED  
09:24AM 10 THE SAME KINDS OF BUILDING BLOCK ELEMENTS THAT WE HAVE BEEN  
09:24AM 11 DISCUSSING ALL ALONG, THE COMMAND EXPRESSIONS, THE COMMAND  
09:24AM 12 STRUCTURE, PROMPTS, HIERARCHY, MODES AND SO ON.

09:24AM 13 THEN ON SLIDE 8, AS THE COMPLAINT GOES ON, WE TALK ABOUT  
09:24AM 14 THE UNIQUE CLI THAT ARISTA APPROPRIATED IS PROTECTED BY U.S.  
09:24AM 15 COPYRIGHTS. AND THIS IS PARAGRAPH 10 OF THE COMPLAINT, OR  
09:24AM 16 ACTUALLY PARAGRAPH 43 OF THE COMPLAINT.

09:24AM 17 THEN WE GO ON TO PARAGRAPH 50 TO ALLEGE THAT ARISTA HAS  
09:24AM 18 SUBSTANTIALLY COPIED CISCO'S CLI AND INFRINGED CISCO'S  
09:24AM 19 COPYRIGHTS IN CISCO IOS, INCLUDING THE CLI.

09:24AM 20 AND THEN WE GO ON TO TALK ABOUT THE VARIOUS COMMANDS AND  
09:24AM 21 ELEMENTS THAT WERE COPIED FROM THE CISCO USER INTERFACE.

09:24AM 22 BASED ON THOSE INITIAL ALLEGATIONS, YOUR HONOR, THEN OUR  
09:25AM 23 EXPERT DR. ALMEROTH PROVIDED EXPERT OPINION SUPPORTING THE  
09:25AM 24 INFRINGEMENT ALLEGATIONS IN THIS CASE, AND THIS IS SLIDE NINE  
09:25AM 25 WHERE HE ALSO ALLEGED THAT THE COPYRIGHTABLE EXPRESSIONS IN

09:25AM 1 CISCO'S CLI IS THE CASE BASIS FOR HIS OPINIONS.

09:25AM 2 HE TALKS ABOUT ON PARAGRAPH 135, YOUR HONOR, ON SLIDE 9 AT  
09:25AM 3 THE BOTTOM LEFT-HAND CORNER, ARISTA HAS FURTHER EXPLAINED THAT  
09:25AM 4 ITS USE OF CISCO'S COPYRIGHTED CLI WAS TO COMPETE DIRECTLY WITH  
09:25AM 5 CISCO.

09:25AM 6 I DON'T THINK THERE COULD BE ANY CONFUSION HERE THAT WE  
09:25AM 7 WERE CLAIMING THE CLI AS COPYRIGHTED. AND WE GO ON TO TALK  
09:25AM 8 ABOUT THE COPYRIGHTED WORK, COPYING OF CISCO'S CLI COMMANDS,  
09:25AM 9 AND FINALLY THE ALLEGATION THAT ARISTA HAS COPIED THE ENTIRE  
09:25AM 10 LOOK AND FEEL OF CISCO'S IOS CLI.

09:25AM 11 SLIDE 10 HE TALKS ABOUT IN THE CONTEXT OF THE ACCESS AND  
09:25AM 12 SIMILARITY, AGAIN HIS FOCUS IS ON ACCESS TO THE CLI, ACCESS TO  
09:26AM 13 THE COPYING AND THEN THE COPYING HAPPENS DIRECTLY BASED ON THAT  
09:26AM 14 ACCESS. AND THE DIRECT EVIDENCE OF COPYING THAT WE HAVE IN  
09:26AM 15 THIS CASE.

09:26AM 16 WE HAVE INCLUDED SOME ADDITIONAL QUOTES FROM SLIDE 11 FROM  
09:26AM 17 DR. ELSTEN WHERE SHE MAKES IT CLEAR THAT THE SOURCE CODE  
09:26AM 18 RELATED TO THE ALLEGED INFRINGED CLI COMMANDS ARE NOT AT ISSUE  
09:26AM 19 IN THIS CASE. THE COPYRIGHTS PRINCIPALLY CONCERN THE CLI.  
09:26AM 20 THERE'S NO ALLEGATION THAT ARISTA HAS COPIED ANY OF CISCO CLI.

09:26AM 21 THOSE ARE VERY CLEAR STATEMENTS FROM HER. AGAIN, THOSE ARE  
09:26AM 22 FUNDAMENTAL PREMISES FOR HER APPORTIONMENT OPINIONS.

09:26AM 23 SLIDE 12, DOCTOR BLACK ALSO MAKES THAT CLEAR. I HAVE BEEN  
09:26AM 24 INFORMED AND UNDERSTAND THAT CISCO DOES NOT ALLEGE ANY SOURCE  
09:26AM 25 CODE COPYING BY ARISTA IN THIS CASE. THE ASPECTS OF CISCO'S

09:26AM 1 CLI THAT ARE THE BASIS OF THE COPYRIGHT INFRINGEMENT CLAIM,  
09:27AM 2 THERE'S NO CLAIM THAT ARISTA HAS COPIED ANY SOURCE OR OBJECT  
09:27AM 3 CODE THAT IMPLEMENTS THE CISCO CLI. CISCO IS NOT ALLEGING  
09:27AM 4 COPYING OF ANY CISCO SOURCE CODE.

09:27AM 5 AND THOSE ARE FROM DOCTOR BLACK'S REPORT AT PARAGRAPHS 518,  
09:27AM 6 519, AND PARAGRAPH 7, AND THE FIRST ONE WAS FROM THE  
09:27AM 7 SUPPLEMENTAL REBUTTAL REPORT PARAGRAPH 33. AND AGAIN, ONE MORE  
09:27AM 8 QUOTE FROM DOCTOR BLACK, PARAGRAPH 52.

09:27AM 9 SO WE THINK WE HAVE BEEN VERY CLEAR IN TERMS OF  
09:27AM 10 DISCLOSURES. WE THINK THEIR EXPERTS CLEARLY UNDERSTOOD WHAT  
09:27AM 11 WAS AT ISSUE. AND BASED ON WHAT THEIR UNDERSTANDING WAS OF OUR  
09:27AM 12 ALLEGATIONS -- AND THEY, THE EXPERTS SAY, WELL, HAS ARISTA  
09:27AM 13 WORKED TOGETHER TO CREATE DEFENSES IN THIS CASE THAT ARE  
09:27AM 14 PREDICATED ON TREATING THE USER INTERFACE AS BEING SEPARATE  
09:27AM 15 FROM THE CODE.

09:27AM 16 SO FOR US, WE REALLY DON'T THINK ARISTA CAN HAVE IT BOTH  
09:27AM 17 WAYS. IF THEY ARE GOING TO COME IN AND MAKE THE APPORTIONMENT  
09:28AM 18 ARGUMENTS TO SAY THE PROFITS MADE BY SELLING THE ACCUSED  
09:28AM 19 TECHNOLOGIES SHOULD BE APPORTIONED BASED ON THE FACT THAT USER  
09:28AM 20 INTERFACE IS A SMALL COMPONENT FROM THEIR VIEW OF THE OVERALL  
09:28AM 21 SYSTEM, AND THE FACT THAT THEY HAVE IMPLEMENTED THE USER  
09:28AM 22 INTERFACE USING DIFFERENT CODE, ALLOWS THEM TO MAKE THAT  
09:28AM 23 APPORTIONMENT, THEN I THINK FOR FAIR USE PURPOSE OR WHATEVER  
09:28AM 24 THEY WANT TO USE THE DEFINITION OF THE WORK TO BE, THEY  
09:28AM 25 SHOULDN'T BE ALLOWED TO TAKE A CONTRARY POSITION.

09:28AM 1 AND THE SAME IS TRUE WITH DOCTOR BLACK, THEY ARE MAKING A  
09:28AM 2 TRANSFORMATIVE DEFENSE THAT RELIES ON USING THE USER INTERFACE  
09:28AM 3 AS THE COPYRIGHTED WORK IN ORDER TO MAKE THE TRANSFORMATIVE  
09:28AM 4 ARGUMENTS.

09:28AM 5 AND SO WE HAVE PROVIDED DISCOVERY RESPONSES, YOUR HONOR,  
09:28AM 6 THIS IS ON SLIDE 14 WHERE WE MADE SOME OF THE SAME ALLEGATIONS.  
09:28AM 7 STARTING IN MAY OF 2015 WHERE WE PROVIDED A NUMBER OF RESPONSES  
09:28AM 8 TO THE INTERROGATORIES, AT THE BOTTOM IT SAYS, "ARISTA ALSO HAS  
09:29AM 9 EXPLAINED THAT ITS USE OF CISCO'S COPYRIGHTED CLI WAS AN  
09:29AM 10 INTENTIONAL PLOY TO WIN CUSTOMERS FROM CISCO SO ARISTA CAN  
09:29AM 11 MARKET ITS PRODUCT AS AN EASILY IMPLEMENTED ALTERNATIVE TO  
09:29AM 12 CISCO PRODUCTS FOR CISCO'S EXISTING CUSTOMERS."

09:29AM 13 SO COULD WE -- HAD THE DISCOVERY TURNED OUT OTHERWISE OR  
09:29AM 14 THE PUBLIC FACTS HAD TURNED OUT OTHERWISE, COULD WE HAVE ALSO  
09:29AM 15 ALLEGED OUR COPYRIGHT INTEREST IN THE SOURCE CODE, ABSOLUTELY.

09:29AM 16 BUT IN THIS CASE, WE HAVE BEEN VERY CONSISTENT THAT THE  
09:29AM 17 PRINCIPAL OR THE PRIMARY BASIS OF THE COPYING ALLEGATIONS IN  
09:29AM 18 THIS CASE INVOLVES WHAT WE HAVE BEEN CALLING THE COPYRIGHTED  
09:29AM 19 CLI. AND THAT HAS BEEN THE ALLEGATION FROM DAY ONE.

09:29AM 20 THE COURT: AND THAT'S THE ENTIRE USER INTERFACE. I  
09:29AM 21 JUST WANT TO MAKE THAT --

09:29AM 22 MR. PAK: THAT'S RIGHT.

09:29AM 23 THE COURT: BECAUSE -- I'VE GONE BACK AND LOOKED AT  
09:29AM 24 THE COMPLAINT AND THE AMENDED COMPLAINT AS WELL, AND I MAY HAVE  
09:30AM 25 MISUNDERSTOOD AT SUMMARY JUDGEMENT, YOUR TERMINOLOGY. AND THEN

09:30AM 1 IT BECAME CLEAR THAT IT -- OR I CAME TO UNDERSTAND THAT YOU  
09:30AM 2 WERE USING THE TERM SYNONYMOUSLY, AND YOU ARE.

09:30AM 3 MR. PAK: YES. THANK YOU, YOUR HONOR. AND WE ARE.

09:30AM 4 AND AGAIN, I THINK THAT THE BEST PLACE IN THE COMPLAINT TO  
09:30AM 5 FIND THAT IS AGAIN, PARAGRAPH 27, WHERE WE SAY CLI IS THE USER  
09:30AM 6 INTERFACE BY WHICH USERS OF CISCO'S PRODUCTS COMMUNICATE WITH  
09:30AM 7 THE PRODUCT IN ORDER TO CONFIGURE AND MANAGE THE PRODUCT. SO I  
09:30AM 8 THINK WE PROVIDED A CLEAR DEFINITION THERE.

09:30AM 9 OF COURSE, WE DO TALK ABOUT THE DIFFERENT BUILDING BLOCKS.  
09:30AM 10 AND I THINK AT THE SUMMARY JUDGEMENT STAGE, WHAT WAS BEFORE  
09:30AM 11 YOUR HONOR WERE THE SPECIFIC ELEMENTS THAT HAVE BEEN IDENTIFIED  
09:30AM 12 WERE COPIED.

09:30AM 13 BUT THE CLI, USER INTERFACE, THOSE WERE USED SYNONYMOUSLY  
09:30AM 14 THROUGHOUT. AND THAT'S ALSO HOW THE HISTORICAL DOCUMENTS AND  
09:30AM 15 THE TESTIMONY FROM THE WITNESSES HAVE TREATED THE TWO WORDS AS  
09:30AM 16 WELL.

09:30AM 17 SO WITH THAT UNDERSTANDING, I DO WANT TO COVER VERY BRIEFLY  
09:30AM 18 WHAT WE BELIEVE ARE THE USER INTERFACES OR THE COPYRIGHTED  
09:31AM 19 WORKS AT ISSUE IN THIS CASE.

09:31AM 20 AND THIS IS ON SLIDE 17. AS YOU HAVE SEEN FROM OUR PAPERS  
09:31AM 21 AND ALSO WE INCLUDED IN OUR COMPLAINT, PARAGRAPH 25, THERE ARE  
09:31AM 22 FOUR RELATED YET DISTINCT OPERATING SYSTEMS THAT CISCO MAKES,  
09:31AM 23 IOS, IOS XR, IOS XE, AND NX-OS.

09:31AM 24 AND WE HAVE DOCUMENTS THAT YOU WILL SEE AT TRIAL AND  
09:31AM 25 TESTIMONY THAT YOU WILL SEE AT TRIAL WHERE ARISTA WILLFULLY AND

09:31AM 1 CONSCIOUSLY DECIDED TO COPY FROM ALL FOUR OF THESE OPERATING  
09:31AM 2 SYSTEMS.

09:31AM 3 THE COURT: AND YOUR EXHIBIT ON PROTECTED ELEMENTS  
09:31AM 4 IDENTIFIES THEM BY OPERATING SYSTEM.

09:31AM 5 MR. PAK: THAT'S RIGHT, YOUR HONOR. EXACTLY.

09:31AM 6 SO WHAT WE DID IN THE PROTECTABILITY FILING WAS ORGANIZE  
09:31AM 7 THE COMMANDS, ORGANIZE THE BUILDING BLOCKS BY OPERATING SYSTEM  
09:31AM 8 TYPE.

09:31AM 9 AND THAT'S NOT SOMETHING NEW IN THE CASE, WE HAVE DONE THIS  
09:32AM 10 CONSISTENTLY WITH THE RESPONSES AND THE REGISTRATION FILINGS.

09:32AM 11 SLIDE 18, THIS IS PART OF DR. ALMEROOTH'S REPORT WHICH WHEN  
09:32AM 12 CISCO REGISTERED THEIR COPYRIGHTS, THERE ARE 26 OF THE  
09:32AM 13 REGISTRATIONS AT WORK, WE SPECIFICALLY REGISTERED A PARTICULAR  
09:32AM 14 VERSION OF ONE OF THESE FOUR OPERATING SYSTEMS.

09:32AM 15 SO THE FIRST SERIES OF REGISTRATIONS YOU SEE ON THE LEFT  
09:32AM 16 RELATE TO THE CISCO IOS. CITE STARTING WITH VERSION 11.0 TO  
09:32AM 17 15.4. THEN WE HAVE SIMILAR REGISTRATIONS FROM IOS XR FROM 3.0  
09:32AM 18 TO 5.2. AND TWO REGISTRATIONS FOR IOS XE, 2.1, 3.5. AND THEN  
09:32AM 19 FOUR REGISTRATIONS FOR NX-OS WHICH IS RELEASE 4.0 TO 6.2.

09:33AM 20 AND THEN THESE ARE THE -- YOUR HONOR, THESE ARE THE BATES  
09:33AM 21 NUMBERS FOR THE APPLICATIONS, THE COPYRIGHT REGISTRATION, THE  
09:33AM 22 REGISTRATION NUMBERS, AND THE PUBLICATION AND REGISTRATION  
09:33AM 23 DATES THAT ARE ASSOCIATED WITH THEM.

09:33AM 24 THE COURT: ARE THE ONLY ONES THAT WERE REGISTERED  
09:33AM 25 MORE THAN FIVE YEARS AFTER PUBLICATION, THE EARLY ONES?

09:33AM 1 MR. PAK: I BELIEVE THOSE ARE THE EARLY ONES,  
09:33AM 2 YOUR HONOR.

09:33AM 3 THE COURT: OKAY.

09:33AM 4 MR. PAK: AND THEN ON SLIDE 19, THERE WERE A SERIES  
09:33AM 5 OF DISCOVERY REQUESTS FROM ARISTA ABOUT COMMAND ORIGINATION AND  
09:33AM 6 COMMERCIAL USE OF THOSE COMMANDS.

09:33AM 7 AND EVERY OPPORTUNITY WE HAD, WE MADE IT VERY CLEAR THAT  
09:33AM 8 FOR A PARTICULAR COMMAND THESE ARE THE PARTICULAR OPERATING  
09:33AM 9 SYSTEMS OF WHICH THAT COMMAND WAS ASSOCIATED WITH.

09:33AM 10 FOR EXAMPLE, IN THE ALMEROOTH REPORT, EXHIBIT OF COPYING  
09:33AM 11 TWO, WE HAVE, I WILL USE ONE EXAMPLE, AAA, AUTHENTICATION LOGIN  
09:33AM 12 IS THE COMMAND. FOR THAT COMMAND, WE IDENTIFIED CISCO IOS, IOS  
09:34AM 13 XR AND IOS XE, AS THE OPERATING SYSTEMS FOR WHICH THE USER  
09:34AM 14 INTERFACE CONTAINS THAT COMMAND. AND WE PROVIDED THE SIMILAR  
09:34AM 15 INFORMATION FOR ALL OF THE ASSERTED ELEMENTS IN THIS CASE.

09:34AM 16 AND IN CISCO'S SUPPLEMENTAL RESPONSE TO ARISTA'S  
09:34AM 17 INTERROGATORY 16, YOU CAN SEE THAT WE ALSO IDENTIFIED THE FIRST  
09:34AM 18 DATE WHEN A COMMAND WAS MADE PART OF A CISCO PRODUCT.

09:34AM 19 AND AGAIN, WE TREATED THAT AS LOOKING AT A PARTICULAR  
09:34AM 20 OPERATING SYSTEM, ONE OF THE FOUR AT ISSUE. SO HERE IT WOULD  
09:34AM 21 BE AAA AUTHENTICATION LOG IN. IT APPEARED FOR THE FIRST TIME  
09:34AM 22 IN CISCO IOS.

09:34AM 23 THE COURT: IS THERE ANY ASSERTED ELEMENT THAT HAS  
09:34AM 24 NOT APPEARED IN A CISCO PRODUCT?

09:34AM 25 MR. PAK: NO, NO.



09:34AM 1 SO ALL OF THE BUILDING BLOCKS, EVERYTHING YOU HAVE SEEN,  
09:34AM 2 WHETHER IT'S COMMAND OUTPUTS, HELP DESCRIPTIONS, HIERARCHIES,  
09:34AM 3 ALL OF THAT WAS FIRST INTRODUCED IN A CISCO PRODUCT DESCRIBED  
09:34AM 4 IN USER MANUALS EMBODIED IN THE SOURCE CODE.

09:35AM 5 THE COURT: ALL RIGHT. NOW LET ME ASK YOU A LITTLE  
09:35AM 6 BIT ABOUT THE WORK AS YOU DEFINE IT.

09:35AM 7 MR. PAK: YES.

09:35AM 8 THE COURT: I HAVE THE ASSERTED PROTECTABLE ELEMENTS  
09:35AM 9 WHICH IS A SUBSET OF THE WORK OF THE USER INTERFACE, AND I  
09:35AM 10 GATHER THAT THROUGH TRIAL THERE WILL BE SOME QUANTIFICATION OF  
09:35AM 11 THE WORK AND OF THESE ALLEGED PROTECTABLE ELEMENTS. AND THEN  
09:35AM 12 OF THE ULTIMATELY PROTECTABLE ELEMENTS AS I DETERMINE THEM.

09:35AM 13 AND I -- YOU HAVE THROUGHOUT THE CASE, TALKED ABOUT THE  
09:35AM 14 COPYING BEING OF THE LOOK AND FEEL OF THE USER INTERFACE. BUT  
09:35AM 15 I DON'T KNOW WHAT PORTION THESE PROTECTABLE ELEMENTS ARE OF THE  
09:35AM 16 USER INTERFACE.

09:35AM 17 IS THAT SOMETHING I NEED TO BE CONCERNED ABOUT NOW?

09:35AM 18 MR. PAK: I DON'T THINK YOU NEED TO BE CONCERNED  
09:35AM 19 ABOUT THAT NOW. BUT LET ME, YOUR HONOR, GIVE YOU A PREVIEW OF  
09:35AM 20 WHAT I THINK YOU WILL HEAR FROM BOTH SIDES IN TERMS OF THE  
09:36AM 21 ISSUE OF THE AMOUNT OF COPYING, BECAUSE THIS IS REALLY ABOUT  
09:36AM 22 UNDER FAIR USE, YOU HAVE A QUESTION OF WHAT WAS TAKEN AS IT  
09:36AM 23 RELATES TO THE COPYRIGHTED WORK.

09:36AM 24 THE COURT: YES.

09:36AM 25 MR. PAK: THE LAW, WE BELIEVE, IS VERY CLEAR THAT YOU

09:36AM 1 LOOK AT NOT ONLY THE QUANTITATIVE NUMBERS, BUT YOU LOOK AT THE  
09:36AM 2 QUALITATIVE ASPECTS.

09:36AM 3 THE COURT: YES.

09:36AM 4 MR. PAK: AND SO THE QUESTION ISN'T SUCH THAT --  
09:36AM 5 ISN'T JUST A SIMPLE QUANTIFICATION OF HERE'S.

09:36AM 6 THE COURT: I UNDERSTAND.

09:36AM 7 MR. PAK: X NUMBER OF COMMANDS, THESE X NUMBER OF  
09:36AM 8 COMMANDS SUBSET OF WHICH WOULD HAVE BEEN COPIED INTO THE  
09:36AM 9 PRODUCT.

09:36AM 10 THE COURT: AND SO THE -- THIS QUANTIFICATION, IN  
09:36AM 11 COMPARISON, HAS NOTHING TO DO WHERE THE FIRST DETERMINATION BY  
09:36AM 12 THE JURY OF INFRINGEMENT.

09:36AM 13 MR. PAK: THAT'S CORRECT.

09:36AM 14 THE COURT: IT IS ONLY RELEVANT, IN YOUR VIEW, TO THE  
09:36AM 15 JURY'S DETERMINATION OF THE DEFENSE OF FAIR USE.

09:36AM 16 MR. PAK: THAT'S RIGHT, YOUR HONOR.

09:36AM 17 BECAUSE I DON'T -- AGAIN, I DON'T THINK THEY HAVE PRESERVED  
09:36AM 18 THIS ARGUMENT, I DON'T THINK THEY HAVE COME IN AND SAID IF THE  
09:36AM 19 COPYRIGHTED WORK IS THE USER INTERFACE AS OPPOSED TO ALL OF THE  
09:36AM 20 CODE, I DON'T THINK THAT WE WILL HEAR AN OPINION THAT SAYS THIS  
09:37AM 21 IS DE MINIMUS, THAT THE 506 COMMANDS THAT WERE COPIED AND ALL  
09:37AM 22 THE DIFFERENT ASPECTS --

09:37AM 23 THE COURT: DOES THE DE MINIMUS -- AND I'M GETTING  
09:37AM 24 OFF ON A TANGENT, BUT I WILL ASK YOU ANYWAY.

09:37AM 25 MR. PAK: SURE.

09:37AM 1 THE COURT: DOES A DE MINIMUS USE COME INTO PLAY ON  
09:37AM 2 INFRINGEMENT SEPARATE FROM FAIR USE?

09:37AM 3 I DON'T SEE IT IN -- AND I THINK ARISTA BELIEVES IT DOES.  
09:37AM 4 I DON'T SEE THAT REFLECTED ANYWHERE IN THE MODEL JURY  
09:37AM 5 INSTRUCTIONS.

09:37AM 6 AND SO I'M -- I DON'T KNOW WHICH WAY THAT CUTS. IT SEEMS  
09:37AM 7 LIKE IT FORESHADOWS FAIR USE BECAUSE IT SEEMS TO BE A FAIRLY  
09:37AM 8 SIGNIFICANT ASPECT OF FAIR USE.

09:37AM 9 MR. PAK: I REALLY DO THINK, ULTIMATELY, IT'S A FAIR  
09:37AM 10 USE QUESTION, YOUR HONOR. BECAUSE YOU COULD, FOR EXAMPLE, FROM  
09:37AM 11 AN INFRINGEMENT PERSPECTIVE, WHAT WE ARE TRYING TO DO IS ASSESS  
09:37AM 12 THE -- WELL, THERE ARE TWO THINGS THAT WE HAVE TO -- AND MY  
09:37AM 13 PARTNER, MS. KATHLEEN SULLIVAN, WILL TALK ABOUT THIS A LITTLE  
09:37AM 14 BIT MORE IN THE CONTEXT OF THE JURY INSTRUCTIONS.

09:37AM 15 BUT THE LAW UNDER COPYRIGHT LAW HAS TWO PARALLEL PATHS.  
09:38AM 16 THERE IS THE DIRECT EVIDENCE OF COPYING LINE OF CASES, AND THEN  
09:38AM 17 THERE IS THE LINE OF CASES THAT SAYS WHERE YOU DON'T HAVE  
09:38AM 18 DIRECT EVIDENCE OF COPYING, WE LOOK AT QUESTIONS OF ACCESS AND  
09:38AM 19 THEN SIMILARITY.

09:38AM 20 AND THE QUESTION IS WHETHER A SUBSTANTIALLY SIMILAR OR --

09:38AM 21 THE COURT: BUT YOU ARE ALLEGING DIRECT.

09:38AM 22 MR. PAK: WE ARE.

09:38AM 23 THE COURT: SO WE DON'T EVEN HAVE TO BE CONCERNED  
09:38AM 24 WITH THE CIRCUMSTANTIAL CASE.

09:38AM 25 MR. PAK: I DON'T THINK WE DO.

09:38AM 1 I THINK IT'S A FALLBACK IN THE SENSE THAT IF THE JURY  
09:38AM 2 DOESN'T BELIEVE THE EVIDENCE, SHOULD WE WILL PRESENT AND WE  
09:38AM 3 THINK THERE IS SUBSTANTIAL EVIDENCE IN THIS CASE OF DIRECT  
09:38AM 4 COPYING, AND WE BELIEVE THAT THE JURY SHOULD BE TOLD THAT IF  
09:38AM 5 YOU FIND THERE IS DIRECT COPYING THAT YOU DON'T EVEN HAVE TO  
09:38AM 6 GET TO THE QUESTION OF WHETHER THE COPYING WAS SUBSTANTIALLY  
09:38AM 7 SIMILAR OR --

09:38AM 8 THE COURT: SO THAT'S A DIFFERENT SUBSTANTIALLY  
09:38AM 9 SIMILAR THAN THE BROAD VERSUS -- THAN THE PROTECTION.

09:38AM 10 MR. PAK: YES.

09:38AM 11 THE COURT: BECAUSE IT --

09:38AM 12 MR. PAK: IT IS, YES.

09:38AM 13 THE COURT: IT'S DIFFICULT WHEN THE SAME TERM OF ART  
09:39AM 14 IS USED SO DIFFERENTLY IN SUCH DIFFERENTLY -- IN SUCH DIFFERENT  
09:39AM 15 SETTINGS. AND WE WILL TALK ABOUT THAT WITH JURY INSTRUCTIONS.  
09:39AM 16 BUT IF I HAD TROUBLE WITH IT, AND THE I COULD SPEND TIME TRYING  
09:39AM 17 TO FIGURE IT OUT AND I GET TO TALK TO YOU, I DON'T KNOW HOW THE  
09:39AM 18 JURY IS GOING TO DEAL WITH THAT.

09:39AM 19 SO I THINK IN THE JURY INSTRUCTIONS THERE MIGHT HAVE BEEN  
09:39AM 20 SOME DISCUSSION OF DIFFERENT TERMINOLOGY THAT WOULD BE MORE APT  
09:39AM 21 FOR THIS ISSUE OF YOUR PROOF OF COPYING, BECAUSE OF COURSE THE  
09:39AM 22 JURY IS GOING TO WALK THROUGH COPYING AND THEN INFRINGEMENT  
09:39AM 23 SEPARATELY.

09:39AM 24 MR. PAK: BUT I THINK THE BOTTOM LINE IS WHETHER YOU  
09:39AM 25 LOOK AT IT AS JUST FAIR USE OR EVEN IF YOU WERE TO SAY THAT

09:39AM 1 IT'S A QUESTION RELATED TO INFRINGEMENT AS PART OF SOME TYPE OF  
09:39AM 2 DE MINIMUS DEFENSE, YOUR HONOR, I THINK IT COMES BACK TO THE  
09:39AM 3 SAME POINT. WHICH IS FROM A COPYRIGHT PERSPECTIVE, WE ARE NOT  
09:39AM 4 ASKING THE JURY OURS JUST SIMPLY COUNT UP THINGS.

09:39AM 5 WHAT WE ARE ASKING THEM TO DO IS GOING OUT AND THERE ARE  
09:39AM 6 LOTS OF CASES WE CITED TO YOU YOUR HONOR, IS THIS THE HEART OF  
09:40AM 7 A COPYRIGHTED WORK, IS WHAT THEY TOOK IMPORTANT, IS WHAT THEY  
09:40AM 8 TOOK SOMETHING --

09:40AM 9 THE COURT: THAT'S IN A FAIR USE CONSIDERATION.

09:40AM 10 MR. PAK: FAIR USE. AND ALSO FROM A DE MINIMUS  
09:40AM 11 PERSPECTIVE, WHEN YOU TALK ABOUT --

09:40AM 12 THE COURT: AGAIN, YOU SAY THERE'S NO DE MINIMUS  
09:40AM 13 ASPECT.

09:40AM 14 MR. PAK: RIGHT.

09:40AM 15 THE COURT: WHICH WOULD BE REALLY TO NEGATE YOUR  
09:40AM 16 CASE.

09:40AM 17 DE MINIMUS USE IS NOT AN AFFIRMATIVE DEFENSE. SO IT WOULD,  
09:40AM 18 IF ANYTHING, BE AN OPPORTUNITY FOR THE DEFENSE TO NEGATE AN  
09:40AM 19 ELEMENT OF YOUR CASE.

09:40AM 20 MR. PAK: I BELIEVE THAT'S CORRECT.

09:40AM 21 WITH RESPECT TO -- I BELIEVE THAT'S CORRECT, ALTHOUGH AS  
09:40AM 22 YOUR HONOR NOTES, I THINK THERE'S AMBIGUITY IN THE MODEL  
09:40AM 23 INSTRUCTIONS.

09:40AM 24 I THINK THAT FROM OUR PERSPECTIVE, THIS IS A CASE REALLY  
09:40AM 25 ABOUT THE, FROM OUR PERSPECTIVE, COPYING OF VERY IMPORTANT

09:40AM 1 COMMANDS, VERY IMPORTANT ELEMENTS.

09:40AM 2 WE HAVE LOTS OF EVIDENCE THAT WE WILL SHOW TO THE JURY AT  
09:40AM 3 TRIAL THAT TALK ABOUT ARISTA COPYING THE THINGS THAT THEY  
09:40AM 4 THOUGHT WERE THE MOST RELEVANT, THE MOST IMPORTANT.

09:41AM 5 AND THIS DOES GO INTO ONE OF THE ISSUES IN THE CASE THAT  
09:41AM 6 YOU HAVE HEARD US TALK ABOUT WHICH IS, FOR EXAMPLE, IOS IS AN  
09:41AM 7 UBER OPERATING SYSTEM.

09:41AM 8 WE MAKE LOTS AND LOTS OF PRODUCTS THAT ARISTA DOES NOT  
09:41AM 9 MAKE. IT'S AN OPERATING SYSTEM THAT CONTROLS CABLE DEVICES,  
09:41AM 10 IT'S AN OPERATING SYSTEM THAT CONTROLS VOICEOVER IP GATEWAYS  
09:41AM 11 AND HOME NETWORKING PRODUCTS, THE KINDS OF PRODUCTS THAT ARISTA  
09:41AM 12 DOES NOT MAKE.

09:41AM 13 SO FROM OUR PERSPECTIVE, WHETHER YOU LOOK AT IT AS FAIR USE  
09:41AM 14 OR YOU LOOK AT IT AS DE MINIMUS, WE THINK IT'S CRITICALLY  
09:41AM 15 IMPORTANT THAT ARISTA COPIED THOSE ELEMENTS FROM OUR INTERFACE  
09:41AM 16 THAT PERTAIN DIRECTLY TO THE GIGABIT ETHERNET SWITCHES THAT  
09:41AM 17 THEY MAKE.

09:41AM 18 THE COURT: WELL THERE WAS A POINT IN READING YOUR  
09:41AM 19 PAPERS WHERE I BECAME CONCERNED THAT YOU WERE FURTHER  
09:41AM 20 SEGMENTING THE WORK TO BE ONLY THE PORTION OF THE USER  
09:41AM 21 INTERFACE THAT SUPPORTED THE SWITCH IN QUESTION, AND THAT'S NOT  
09:41AM 22 WHAT YOU ARE DOING?

09:41AM 23 MR. PAK: THAT'S NOT WHAT WE ARE DOING.

09:41AM 24 WE ARE MERELY JUST GIVING YOU A FLAVOR OF THE TYPE OF  
09:42AM 25 EVIDENCE THAT WE WILL BE PRESENTING AT TRIAL AS TO THE

09:42AM 1 QUALITATIVE SIGNIFICANCE OF WHAT THEY TOOK. THAT THE  
09:42AM 2 COPYRIGHTED WORK, THE USER INTERFACE THAT CORRESPONDS TO EACH  
09:42AM 3 OF THESE FOUR OPERATING SYSTEMS. WE BELIEVE THAT WHAT THEY  
09:42AM 4 TOOK FROM EACH OF THESE FOUR OPERATING SYSTEMS ARE THE MOST  
09:42AM 5 IMPORTANT COMMANDS, USER INTERFACE ELEMENTS, FOR THEIR USE IN  
09:42AM 6 THE GIGABIT ETHERNET SWITCHING CONTEXT, BECAUSE THAT'S THE TYPE  
09:42AM 7 OF PRODUCT THAT THEY MAKE.

09:42AM 8 SO IT DOESN'T MAKE SENSE FOR ARISTA TO COPY COMMANDS THAT  
09:42AM 9 HAVE NOTHING TO DO WITH ETHERNET. SO FROM OUR PERSPECTIVE, FOR  
09:42AM 10 THEM TO COME IN AND SAY WELL, THERE ARE 10,000 PLUS COMMANDS IN  
09:42AM 11 IOS, WHO CARES, YOU KNOW, FROM OUR PERSPECTIVE.

09:42AM 12 THE COURT: THAT WOULD BE UP TO THE JURY.

09:42AM 13 MR. PAK: THAT WOULD BE UP TO THE JURY.

09:42AM 14 SO THAT'S REALLY -- AND THEN AT THE END, YOUR HONOR, WE  
09:42AM 15 JUST HAD A SHORT TIMELINE FOR YOUR HONOR'S BENEFIT THAT SHOWS  
09:42AM 16 THE DISCLOSURE DATES FOR VARIOUS MATERIALS THAT I HAVE  
09:42AM 17 PRESENTED TO YOU TODAY.

09:42AM 18 THE COURT: THANK YOU.

09:42AM 19 MR. PAK: THANK YOU, YOUR HONOR.

09:42AM 20 THE COURT: ALL RIGHT. LET ME TURN TO MR. KWUN, ARE  
09:43AM 21 YOU ARGUING THIS?

09:43AM 22 MR. FERRALL: I'M GOING TO START, TO TALK ABOUT THE  
09:43AM 23 DISCLOSURES, IF THAT'S OKAY WITH YOUR HONOR.

09:43AM 24 THE COURT: ABSOLUTELY.

09:43AM 25 MR. FERRALL: SO I HAVE A SET OF SLIDES ALSO,

09:43AM 1 YOUR HONOR.

09:43AM 2 THE COURT: SO PRESUMABLY, THIS IS -- THIS GOES TO  
09:43AM 3 MORE THAN JUST --

09:43AM 4 MR. FERRAL: IT DOES, INDEED.

09:43AM 5 THE COURT: OTHERWISE WE WILL BE EATING TURKEY  
09:43AM 6 TOGETHER.

09:43AM 7 MR. FERRALL: NO, NO, NO.

09:43AM 8 YOUR HONOR, I THINK A COMMENT THAT YOU HAD AT THE BEGINNING  
09:43AM 9 OF MR. PAK'S ARGUMENT IS AN IMPORTANT PLACE TO START, WHICH IS  
09:43AM 10 TO CLARIFY WHAT WE ARE NOT FIGHTING ABOUT RIGHT NOW.

09:44AM 11 WE ARE NOT FIGHTING ABOUT THE FACT THAT CISCO HAS  
09:44AM 12 REGISTERED 26 DIFFERENT OPERATING SYSTEMS. WE ARE NOT FIGHTING  
09:44AM 13 ABOUT THE FACT THAT TO THE EXTENT THERE'S PROTECTED EXPRESSION  
09:44AM 14 IN THOSE OPERATING SYSTEMS, THOSE ARE REGISTERED, INCLUDING  
09:44AM 15 PROTECTED EXPRESSION IN THE USER INTERFACE, THOSE ARE COVERED  
09:44AM 16 BY THE REGISTRATION. THAT'S NOT WHAT THIS IS ABOUT.

09:44AM 17 THE SECOND IMPORTANT POINT, WHICH MAY HAVE BEEN-- BUT WAS  
09:44AM 18 NOT THE SUBJECT, LET'S SAY, OF MR. PAK'S TESTIMONY, IS THAT  
09:44AM 19 THIS IS NOT A DISPUTE ABOUT WHETHER CISCO HAS ALLEGED COPYING  
09:44AM 20 OF ELEMENTS OF THE USER INTERFACE.

09:44AM 21 OF COURSE, WE KNOW THAT. THAT HAS BEEN ALLEGED FROM THE  
09:44AM 22 BEGINNING. SO ALL OF THE CITATIONS TO EXPERT REPORTS AND  
09:44AM 23 DISCOVERY THAT ALLEGES COPYING OF CLI ELEMENTS, ABSOLUTELY. WE  
09:44AM 24 KNOW THAT THAT'S THE CASE.

09:45AM 25 WHAT THIS IS ABOUT IS DEFINING THE WORK TO WHICH THE



09:45AM 1 COPYING IS GOING TO BE COMPARED. AND WE KNOW THAT'S IMPORTANT  
09:45AM 2 FOR TWO, AT LEAST -- ACTUALLY, AT LEAST THREE CRITICAL ASPECTS  
09:45AM 3 OF THE CASE.

09:45AM 4 ONE IS INFRINGEMENT, SINCE ULTIMATELY THE JURY NEEDS TO  
09:45AM 5 DETERMINE WHETHER WHATEVER IS DETERMINED TO HAVE BEEN COPIED  
09:45AM 6 PROTECTED EXPRESSION IS SUBSTANTIALLY SIMILAR OR VIRTUALLY  
09:45AM 7 IDENTICAL TO THE WORK, TO THE WORK. YOU'VE GOT TO KNOW WHAT  
09:45AM 8 THE DENOMINATOR IS BEFORE YOU COMPARE IT TO THE ENUMERATOR.

09:45AM 9 THE COURT: WE HAVE A VAST DIFFERENCE OF VIEW OF THAT  
09:45AM 10 TERMINOLOGY RIGHT THERE THAT WE ARE GOING TO HAVE TO TALK ABOUT  
09:45AM 11 IN JURY INSTRUCTIONS.

09:45AM 12 MR. FERRALL: RIGHT, RIGHT. BUT I DON'T THINK  
09:45AM 13 THERE'S ANY QUESTION THAT THE LAW REQUIRES THAT COMPARISON.

09:45AM 14 THE COURT: THERE'S SOME COMPARISON THAT NEEDS TO BE  
09:45AM 15 DONE, THAT'S CERTAINLY TRUE.

09:45AM 16 MR. FERRALL: RIGHT.

09:45AM 17 IT'S ALSO CRITICAL TO FAIR USE BECAUSE THE STATUTORY  
09:46AM 18 ELEMENTS ALONE OF FAIR USE REFER TO THE USE IN THE CONTEXT OF  
09:46AM 19 THE WORK. WHAT IS THE NATURE OF THE WORK, AND HOW HAS THE  
09:46AM 20 ALLEGED INFRINGEMENT CAUSED A MARKET HARM TO THE WORK.

09:46AM 21 AGAIN, YOU'VE GOT TO KNOW THE DENOMINATOR.

09:46AM 22 LASTLY, FOR DAMAGES, AND HERE I WILL BEGIN TO ADDRESS SOME  
09:46AM 23 OF MR. PAK'S POINT AND THEN WE WILL GET TO MY OWN PRESENTATION.  
09:46AM 24 THIS CASE, THE DAMAGES CASE THAT WE WILL HEAR IS ALL ABOUT  
09:46AM 25 DAMAGES TO LOST SALES OF CISCO'S SWITCHES WHICH RUN ENTIRE

09:46AM 1 OPERATING SYSTEMS.

09:46AM 2 THERE'S NO DAMAGES THEORY THAT SAYS THIS IS ABOUT THE LOST  
09:46AM 3 VALUE TO A USER INTERFACE, NOT ONE. NEITHER SIDE TALKS ABOUT  
09:46AM 4 THE LOST VALUE TO A USER INTERFACE. THEY TALK ABOUT PROFITS  
09:47AM 5 EITHER THAT CISCO LOST OR THAT ARISTA GAINED AS A RESULT OF  
09:47AM 6 SELLING ENTIRE SWITCHES RUNNING ENTIRE OPERATING SYSTEMS.

09:47AM 7 SO WE KNOW THAT THIS IS A CRITICAL ISSUE, WHICH IS WHY WE  
09:47AM 8 BROUGHT THE MOTION IN LIMINE AND YOUR HONOR DEFERRED IT. AND  
09:47AM 9 IF WE COULD JUST GO TO THE FIRST SLIDE.

09:47AM 10 YOUR HONOR, I THINK YOU WERE PROBABLY -- PROBABLY HAD THIS  
09:47AM 11 IN MIND THIS MORNING, SAID THAT THIS IS CISCO'S BURDEN TO  
09:47AM 12 DEMONSTRATE THAT THE DISCLOSURE HAS BEEN ADEQUATE.

09:47AM 13 SO WE KNEW THIS WAS IMPORTANT FROM THE VERY BEGINNING, WE  
09:47AM 14 ASKED A SERIES OF INTERROGATORIES THAT I'M GOING TO WALK YOU  
09:47AM 15 THROUGH, AND I BEG THE COURT'S PATIENCE WITH THIS BECAUSE IT  
09:47AM 16 WILL TAKE A LITTLE BIT OF TIME, BUT I WILL SAY THAT NOT ONE OF  
09:47AM 17 THESE WAS DISCUSSED BY MR. PAK.

09:47AM 18 SO WE ASKED FOR THIS INFORMATION ON AT LEAST FOUR DIFFERENT  
09:47AM 19 OCCASIONS. THE FIRST ONE WAS PROPOUNDED IN APRIL OF 2015,  
09:48AM 20 INTERROGATORY 6. IDENTIFY WITH SPECIFICITY EACH COPYRIGHTED  
09:48AM 21 WORK BY COPYRIGHT AND REGISTRATION NUMBER THAT YOU CONTEND  
09:48AM 22 ARISTA HAS UNLAWFULLY COPIED.

09:48AM 23 OKAY. CISCO HAS ANSWERED THIS QUESTION, THIS INTERROGATORY  
09:48AM 24 MULTIPLE TIMES. I WILL SHOW YOU THE FIRST ANSWER, WHICH IS THE  
09:48AM 25 NEXT SLIDE. BUT THIS IS REPEATED UP THROUGH THE VERY LAST DAY

09:48AM 1 OF DISCOVERY, THEY HAD THE SAME ANSWER.

09:48AM 2 CISCO'S ANSWER WAS TO IDENTIFY BY COLUMN, THAT COLUMN, A  
09:48AM 3 LIST OF COPYRIGHTED WORKS INFRINGED BY ARISTA WHICH WERE ENTIRE  
09:48AM 4 OPERATING SYSTEMS. OKAY. NO MENTION OF USER INTERFACE, NO  
09:48AM 5 MENTION THAT THE WORK IS THE CLI.

09:48AM 6 IN THE SAME SET OF INTERROGATORIES, WE ASKED, IDENTIFY WITH  
09:48AM 7 SPECIFICITY EACH ARISTA CLI COMMAND THAT YOU CONTEND INFRINGES  
09:49AM 8 ANY COPYRIGHTED WORK, AND IDENTIFY WHICH WORK IT INFRINGES.  
09:49AM 9 BECAUSE WE NEED TO TRY TO PAIR THINGS UP, WHICH ONE GOES WITH  
09:49AM 10 WHICH.

09:49AM 11 SO AGAIN, WE GOT A RESPONSE WHICH REFERS US TO EACH  
09:49AM 12 OPERATING SYSTEM. IOS 11.0, 11.1, ET CETERA. I DON'T HAVE THE  
09:49AM 13 WHOLE CHART HERE, BUT EVERY REGISTERED OPERATING SYSTEM, THAT'S  
09:49AM 14 WHAT CISCO DISCLOSED AS THE WORK IN WHICH ONE COULD FIND, THE  
09:49AM 15 WORK THAT WAS INFRINGED BY THE USE OF COMMANDS.

09:49AM 16 THE COURT: WELL, THE REGISTERED WORK IS THE IOS.

09:49AM 17 SO, YOU KNOW, YOU DON'T AGREE WITH MR. PAK'S ARGUMENT THAT  
09:49AM 18 THE CASE LAW GRANTED FROM OTHER DISTRICTS TALKS ABOUT WITHIN  
09:49AM 19 EACH REGISTRATION THERE ARE TWO DISTINCT, PROTECTABLE WORKS,  
09:50AM 20 THE SOURCE CODE AND THE USER INTERFACE. AND SO TO IDENTIFY THE  
09:50AM 21 REGISTERED WORK AS THE IOS, THERE IS NO PHYSICAL REGISTERED  
09:50AM 22 WORK OF THE USER INTERFACE, THIS IS MAYBE A JUDGE-CREATED  
09:50AM 23 CONSTRUCT TO MAKE SENSE OF THE -- AND I THINK IT'S SUPPORTED,  
09:50AM 24 AT LEAST CISCO GIVES ME SOME SUPPORT FOR THE COPYRIGHT OFFICE  
09:50AM 25 ALSO SEEING THIS AS SEPARATE PROTECTED WORKS. I'M JUST NOT

09:50AM 1 SURE THAT WHEN IT SAYS REGISTERED WORK, THAT WE ARE GETTING AT  
09:50AM 2 THE ISSUE I HAVE TO DECIDE WHICH IS THE ASSERTED WORK WHICH I  
09:50AM 3 THINK MAY BE DIFFERENT AS A SUBSET.

09:50AM 4 MR. FERRALL: WELL, FAIR ENOUGH. ALTHOUGH THE  
09:50AM 5 PREVIOUS ANSWER TO INTERROGATORY 6 --

09:50AM 6 THE COURT: WELL, THE PREVIOUS ONE MIGHT HAVE BEEN A  
09:50AM 7 LITTLE CLOSER, BUT THIS ONE SAYS REGISTERED WORK. THE PREVIOUS  
09:50AM 8 ONE SAYS COPYRIGHTED WORK.

09:50AM 9 MR. FERRALL: RIGHT.

09:50AM 10 AND I DON'T THINK CISCO IS GOING TO DENY THAT IT WANTS TO  
09:51AM 11 PRESENT TO THE JURY THE ARGUMENT THAT THE COPYRIGHTED WORK TO  
09:51AM 12 WHICH THEY COMPARE THE ALLEGED COPYING IS THE USER INTERFACE.

09:51AM 13 THE COURT: OH, THAT'S WHAT WANTS TO DO.

09:51AM 14 MR. FERRALL: ABSOLUTELY.

09:51AM 15 AND SURELY, WE DO HAVE A DISPUTE ABOUT THE LAW AND WHETHER  
09:51AM 16 IT'S EVEN POSSIBLE, BUT SURELY IF CISCO WANTED THAT TO BE THE  
09:51AM 17 THEORY IN THE CASE WHEN WE ASKED WHAT THE COPYRIGHTED WORK WAS,  
09:51AM 18 IT SHOULD HAVE SAID THE USER INTERFACE OF IOS 11.0. AND THE  
09:51AM 19 USER INTERFACE OF ALL OF THESE OTHER OPERATING SYSTEMS.

09:51AM 20 BUT LET'S CONTINUE BECAUSE THERE'S MORE.

09:51AM 21 THE COURT: OKAY.

09:51AM 22 MR. FERRALL: LET'S GO ON TO -- SO LATER IN THE CASE,  
09:51AM 23 IN MARCH OF 2016, AS WE LEARNED MORE ABOUT THE ALLEGATIONS, WE  
09:51AM 24 CAME TO REALIZE, OF COURSE THAT THERE LIST OF, FOR EXAMPLE 500  
09:51AM 25 COMMANDS, AND HIERARCHIES AND SO FORTH, IS NOT FOUND IN ANY

09:51AM 1 OPERATING SYSTEM. THEY ARE COMBINED. IT'S A COMBINED LIST  
09:52AM 2 FROM VARIOUS OF THE 26 REGISTERED WORKS. SO WE SAID WE NEED TO  
09:52AM 3 GET CLARITY ON THIS.

09:52AM 4 SO WE ASKED FOR EACH COMMAND, MODE, HIERARCHY, PROMPT OR  
09:52AM 5 COMMAND RESPONSE THAT YOU CONTEND ARISTA UNLAWFULLY COPIED,  
09:52AM 6 IDENTIFY EACH AND EVERY ASSERTED COPYRIGHTED REGISTERED WORK IN  
09:52AM 7 WHICH SUCH COMMAND APPEARS, INCLUDING THE REGISTRATION NUMBER,  
09:52AM 8 ET CETERA, AND THE BATES NUMBER.

09:52AM 9 OKAY. SO THE RESPONSE, AGAIN, IS A LIST OF OPERATING  
09:52AM 10 SYSTEMS.

09:52AM 11 THEN IN THE SAME SET OF INTERROGATORIES, THE NEXT  
09:52AM 12 INTERROGATORY, AND THIS GETS TO YOUR QUESTION EARLIER, WHICH IS  
09:52AM 13 THE QUESTION OF WHAT PORTION OF THE WORK IS ALLEGEDLY COPIED.

09:52AM 14 AND WHILE WE CAN HAVE A DISPUTE, AND MR. PAK AND CISCO CAN  
09:52AM 15 ARGUE TO THE JURY THAT IT SHOULD ALL BE QUALITATIVE, THERE'S  
09:53AM 16 CERTAINLY NO LAW THAT SAYS IT CAN ONLY BE QUALITATIVE AND  
09:53AM 17 QUANTITATIVE DOESN'T MATTER.

09:53AM 18 SO WE ASKED INTERROGATORY 25. FOR EACH  
09:53AM 19 COPYRIGHT-REGISTERED WORK THAT CISCO ALLEGES ARISTA UNLAWFULLY  
09:53AM 20 COPIED, IDENTIFY THE TOTAL NUMBER OF COMMANDS MODES  
09:53AM 21 HIERARCHIES, PROMPTS, RESPONSES AND LINES OF SOFTWARE CODE IN  
09:53AM 22 THE WORK.

09:53AM 23 THE RESPONSE, AGAIN, IS A LIST OF OPERATING SYSTEMS ONLY,  
09:53AM 24 NEVER A MENTION OF THE USER INTERFACE, NEVER A MENTION OF --  
09:53AM 25 THERE'S, FRANKLY, NOT EVEN A LIST OF THE NUMBER OF COMMANDS.

09:53AM 1 WE ARE TOLD TO REFER TO SOURCE CODE AND DOCUMENTS.

09:53AM 2 THE COURT: WELL, WAIT A MINUTE, YOU ASKED FOR SOURCE  
09:53AM 3 CODE, SO IT HAD TO BE PROVIDED, IT DOESN'T MEAN IT'S ASSERTED  
09:53AM 4 IN THIS CASE.

09:53AM 5 MR. FERRALL: CORRECT.

09:53AM 6 BUT THE QUESTION, THE INTERROGATORY ASKED FOR THE LINES OF  
09:53AM 7 CODE OF THE ASSERTED WORK. AND WHAT THEY DID WAS THEY REFERRED  
09:54AM 8 US TO THE ENTIRE SOURCE CODE. THAT'S FINE. THAT WOULD -- THAT  
09:54AM 9 CAN ONLY LEAD US TO CONCLUDE THAT IT'S THE ENTIRE SOURCE CODE  
09:54AM 10 THAT REPRESENTS THE LINES OF THE ASSERTED WORK, RIGHT.

09:54AM 11 IF THE QUESTION IS, WHAT ARE THE -- WHAT'S THE PORTION OF  
09:54AM 12 THE CODE THAT IMPLEMENTS THE CLI OR THE USER INTERFACE, THIS  
09:54AM 13 WAS THE TIME FOR THEM TO ANSWER THAT QUESTION, BUT THEY DIDN'T.

09:54AM 14 LET ME TALK TO YOU A LITTLE BIT --

09:54AM 15 THE COURT: SO WHEN I LOOK AT THIS RESPONSE, OF  
09:54AM 16 COURSE THIS ACTUALLY DOESN'T MEAN ANYTHING TO ME, I MEAN, THIS  
09:54AM 17 IS, THIS IS INCOMPREHENSIBLE TO ME, SO I JUST WANT TO  
09:54AM 18 UNDERSTAND WHAT YOU'RE SAYING.

09:54AM 19 THAT BASED ON THIS INTERROGATORY NUMBER 25 WHERE YOU ASKED  
09:54AM 20 FOR EACH WORK COPIED, IDENTIFY THE TOTAL COMMANDS, ET CETERA  
09:55AM 21 AND LINES OF SOFTWARE CODE IN THE WORK. AND YOU ARE SAYING  
09:55AM 22 THEY IDENTIFIED THE ENTIRE IOS AND NOT JUST THE CODE THAT  
09:55AM 23 CORRESPONDED TO THE USER INTERFACE?

09:55AM 24 MR. FERRALL: YES. AND I WANT TO TALK ABOUT THE  
09:55AM 25 DOCUMENTS THEY IDENTIFIED ALSO.

09:55AM 1 SO THEY -- SO FOR THE CODE, THEY IDENTIFIED JUST ALL OF THE  
09:55AM 2 SOURCE CODE THEY PRODUCED. FOR THE RELATED DOCUMENTS,  
09:55AM 3 YOUR HONOR, THIS CITATION TO CSI, CLI, OBVIOUSLY THAT'S RATHER  
09:55AM 4 OBTUSE.

09:55AM 5 THE COURT: FOR ME IT IS.

09:55AM 6 MR. FERRALL: LET ME TELL YOU WHAT IT IS.

09:55AM 7 FOR 11.0, IT'S A REFERENCE TO A LINK IN CISCO. THAT LINK  
09:55AM 8 CITES TO, IN THE CASE OF 11.0, IT CITES TO ABOUT A DOZEN, MAYBE  
09:55AM 9 20 DIFFERENT MANUALS COVERING EVERYTHING THAT 11.0 COVERS.

09:56AM 10 NOW THAT'S WHAT THEY DO FOR EVERY OPERATING SYSTEM. BY THE  
09:56AM 11 TIME YOU GET TO SOME OF THESE LATER OPERATING SYSTEMS, THERE  
09:56AM 12 ARE, JUST TO LIST THE TITLES OF THE MANUALS TAKES MULTIPLE  
09:56AM 13 PAGES SINGLE SPACED. IT'S A SUMMARY EXHIBIT. I CAN HAND YOU  
09:56AM 14 UP.

09:56AM 15 THE COURT: NO.

09:56AM 16 MR. FERRALL: IT IS ABOUT A 30-SOME PAGE  
09:56AM 17 SINGLE-SPACED LIST OF MANUALS.

09:56AM 18 IF YOU INCLUDE EVERY DOCUMENTATION THAT HAS BEEN CITED IN  
09:56AM 19 RESPONSE TO THESE INTERROGATORIES THAT HAS ASKED FOR AN  
09:56AM 20 EXPLANATION OF WHAT'S THE WORK, IT'S A 30-PLUS SINGLE-SPACED  
09:56AM 21 LIST OF MANUALS COVERING EVERYTHING THAT CISCO DOES. CABLE  
09:56AM 22 MODEMS, HOME WIFI, PROTOCOLS THAT HAVE BEEN OUT OF DATE FOR  
09:56AM 23 YEARS.

09:56AM 24 IT'S ALL CITED, IT'S ALL OUT THERE. THAT'S WHAT CISCO  
09:56AM 25 ALLEGED WE ARE SUPPOSED TO COMPARE THE ASSERTION AGAINST.

09:57AM 1 THAT'S WHAT THEY'VE ALLEGED.

09:57AM 2 THE COURT: CISCO IS JUST GIVING YOU WHAT THEY THINK  
09:57AM 3 IS RESPONSIVE TO WHAT YOU'VE ASKED, AND THAT CAN BE QUITE  
09:57AM 4 DIFFERENT THAN WHAT THEY ARE GOING TO LATER ASSERT.

09:57AM 5 MR. FERRALL: WELL, BUT YOUR HONOR, HERE'S THE  
09:57AM 6 PROBLEM, THE PRACTICAL PROBLEM THAT WE FACE -- AND I'VE GOT ONE  
09:57AM 7 MORE DISCOVERY RESPONSE TO TALK ABOUT -- THE PRACTICAL PROBLEM  
09:57AM 8 THAT WE FACE IS THAT BECAUSE THERE'S NOT AN ASSERTION HERE IN  
09:57AM 9 RESPONSE TO FOUR DIFFERENT INTERROGATORIES, THAT THE WORK TO BE  
09:57AM 10 COMPARED IS THE USER INTERFACE. THERE WAS NEVER DISCOVERY  
09:57AM 11 TAKEN ABOUT THE METES AND BOUNDS OF THAT USER INTERFACE. WHAT  
09:57AM 12 DOES CONSTITUTE THAT USER INTERFACE.

09:57AM 13 WE SAW AFTER SUMMARY JUDGEMENT, LONG AFTER DISCOVERY  
09:57AM 14 CLOSED, CISCO'S THEORY OF THE FOUR BUILDING BLOCKS, BUT WE  
09:58AM 15 NEVER HAD THE CHANCE TO -- THE DISCLOSURE OF 4 OR 5 BUILDING  
09:58AM 16 BLOCKS, WHAT CONSTITUTES THOSE BUILDING BLOCKS?

09:58AM 17 THERE'S NEVER BEEN A QUANTIFICATION OF THE COMMANDS IN EACH  
09:58AM 18 USER INTERFACE. THERE'S NEVER BEEN A QUANTIFICATION OF THE  
09:58AM 19 MARKET HARM ON THE USER INTERFACES. YOU WON'T SEE THAT IN ANY  
09:58AM 20 OF THE EXPERT REPORTS, YOU WON'T SEE ANY ANALYSIS OF THIS USER  
09:58AM 21 INTERFACE HAS THIS SORT OF MARKET VALUE.

09:58AM 22 THE COURT: I GUESS, MR. FERRALL, I THINK YOUR  
09:58AM 23 ARGUMENT GOES TOO FAR.

09:58AM 24 IN MY VIEW, WHAT YOU ARE SUGGESTING WOULD ESSENTIALLY  
09:58AM 25 ELIMINATE THE OPPORTUNITY TO PROTECT COMPUTER SOFTWARE PROGRAMS



09:58AM 1 BECAUSE OF THE ENORMITY OF THE WORK ITSELF. AND THE DROP IN  
09:58AM 2 THE OCEAN THAT THE COPYING WOULD BE, THAT FAIR USE WILL ALWAYS  
09:58AM 3 RULE THE DAY SIMPLY ON THE QUANTITATIVE EVALUATION. AND IF  
09:58AM 4 THERE'S A DE MINIMUS EVALUATION ON INFRINGEMENT, A COPYRIGHT  
09:59AM 5 OWNER COULD NEVER WIN.

09:59AM 6 I THINK YOU ARE SAYING TOO MUCH HERE. AND I THINK IT IS  
09:59AM 7 REASONABLE, AND FRANKLY I DON'T ACTUALLY THINK THAT CISCO HAS  
09:59AM 8 NARROWED THE SCOPE OF ITS WORK AS MUCH AS I HAD FEARED IT WAS  
09:59AM 9 DOING EARLIER. THE USER INTERFACE IS STILL A SUBSTANTIAL WORK.

09:59AM 10 AND THESE -- AND I HAVE -- I MEAN, I HAVE TO SIT AT THE  
09:59AM 11 TRIAL TO FIND OUT WHAT IT IS BECAUSE IT DOESN'T MATTER TO ME  
09:59AM 12 NOW HOW BIG IT IS. BUT I ONLY BECAME CONCERNED WHEN I THOUGHT  
09:59AM 13 THAT THEY WERE DEFINING THE WORK AS EXACTLY WHAT WAS COPIED.  
09:59AM 14 AND I WAS WRONG ON THAT.

09:59AM 15 AND THEN I BECAME CONCERNED THROUGH SOME OF THE PHRASEOLOGY  
09:59AM 16 THAT THEY WERE DEFINING THE WORK AS THAT PORTION OF THE USER  
09:59AM 17 INTERFACE THAT SUPPORTED THE PARTICULAR PRODUCTS IN QUESTION.  
09:59AM 18 AND THAT'S NOT WHAT THEY ARE DOING.

09:59AM 19 SO THERE CLEARLY WERE WAYS THAT THEY COULD HAVE MAYBE  
10:00AM 20 MANIPULATED THE DEFINITION OF THE WORK THAT WOULD HAVE BEEN  
10:00AM 21 OUTSIDE THE BOUNDS OF ANY CASE AUTHORITY.

10:00AM 22 BUT HERE, THIS IS -- SEEMS LIKE A PRETTY STRAIGHTFORWARD  
10:00AM 23 DIVIDE, A COMPLAINT THAT ACTUALLY SEEMS TO IDENTIFY IT. I HAVE  
10:00AM 24 SOME CONCERNS ABOUT YOUR COMMENTS ON DAMAGES THAT I WILL ASK  
10:00AM 25 MR. PAK TO ADDRESS WHEN IT'S HIS TURN.

10:00AM 1 BUT, YOU KNOW, I GUESS I'M JUST NOT SEEING IT. YOU KNOW,  
10:00AM 2 I'M A LITTLE -- I AM CONCERNED WHEN YOU TALK ABOUT THERE NOT  
10:00AM 3 BEING DISCOVERY TO DETERMINE, AS YOU WILL, THE METES AND BOUNDS  
10:00AM 4 OF THE USER INTERFACE. BUT I DON'T THINK HE'S PUTTING METES OR  
10:00AM 5 BOUNDS ON IT, I'M NOT SURE THERE IS ANY DISCOVERY WHEN IT IS  
10:00AM 6 THE ENTIRE IOS AND NOT A SUBSET OF IT.

10:00AM 7 MR. FERRALL: WELL, WE AGREE THAT IT'S THE ENTIRE  
10:00AM 8 IOS.

10:00AM 9 BUT WHAT -- WHERE THE ENTIRE OPERATING SYSTEM -- SORRY,  
10:01AM 10 WHERE THE USER INTERFACE PART OF THE OPERATING SYSTEM BEGINNING  
10:01AM 11 AND ENDS, IS NOT DEFINED AT ALL, YOUR HONOR.

10:01AM 12 AND IN PARTICULAR, THIS COMES IN THE CODE, CISCO WANTS TO  
10:01AM 13 CALL MR. TERRY SLATTERY. MR. TERRY SLATTERY IS A FORMER CISCO  
10:01AM 14 CONTRACTOR BACK FROM 1990 -- 1990'S, EARLY 1991. HE IS OFTEN  
10:01AM 15 REGARDED AS THE FATHER OF THE CISCO CLI, THOSE ARE LITERALLY  
10:01AM 16 THE WORDS.

10:01AM 17 NOW DOES THAT MEAN THAT HE CREATED A LOT OF CLI COMMANDS OR  
10:01AM 18 RESPONSES? NO, ACTUALLY HE'S CREDITED, I THINK IN THIS CASE,  
10:01AM 19 WITH ONE COMMAND. WHAT HE DID WAS WRITE ALL OF THE UNDERLYING  
10:01AM 20 CODE THAT IMPLEMENTS THE CLI. SO THAT'S WHAT HE, AND INDEED A  
10:01AM 21 LOT OF PEOPLE REFER TO AS A CRITICAL PART, AT LEAST, OF THE  
10:01AM 22 CLI.

10:01AM 23 WE'VE NOT HAD ANY OPPORTUNITY OR ANY REASON TO TRY TO  
10:02AM 24 DEFINE WHERE THE CLI IMPLEMENTING CODE BEGINS VERSUS THE REST  
10:02AM 25 OF IOS. AND AS I UNDERSTAND IT --

10:02AM 1 THE COURT: BUT WHAT'S THE RELEVANCE OF THE CLI  
10:02AM 2 IMPLEMENTING CODE? IT'S NOT AT ISSUE IN THE CASE.

10:02AM 3 MR. FERRALL: IT'S WHAT MAKES THE USER INTERFACE WHAT  
10:02AM 4 IT IS. IT'S WHAT MAKES THE USER INTERFACE -- THE EFFORT THAT  
10:02AM 5 GOES INTO IMPLEMENTING THE CLI, THAT'S HOW THE USER INTERFACE  
10:02AM 6 EXISTS, THAT'S THE CREATIVITY, THAT'S THE CREATIVE WORK THAT  
10:02AM 7 WENT INTO IT.

10:02AM 8 THE COURT: I DON'T THINK THAT'S WHAT IS CISCO IS  
10:02AM 9 ARGUING, THOUGH.

10:02AM 10 MR. FERRALL: WELL, BUT THAT'S WHAT WE ARE GOING TO  
10:02AM 11 ARGUE, THAT'S WHAT CREATES PART OF AT LEAST THE LOOK AND FEEL.

10:02AM 12 WE DON'T THINK THAT IT WAS COPIED, THE SOURCE CODE  
10:02AM 13 CERTAINLY WASN'T COPIED. BUT THE WORK THAT GOES INTO AND THE  
10:02AM 14 PROCESS OF CREATING THE CLI, INCLUDING ALL ASPECTS OF THE LOOK  
10:02AM 15 AND FEEL, NOT JUST WHAT'S ASSERTED IN THIS CASE, THAT'S SURELY  
10:03AM 16 RELEVANT FOR THE JURY TO CONSIDER CISCO'S LOOK AND FEEL  
10:03AM 17 ARGUMENT.

10:03AM 18 THE COURT: WELL, I'M NOT SAYING IT'S NOT RELEVANT,  
10:03AM 19 BECAUSE CERTAINLY THERE -- BUT THIS CASE IS ABOUT THE USER  
10:03AM 20 INTERFACE, THAT PORTION OF THE PROGRAM THAT THE ENGINEER SEES  
10:03AM 21 AND CONNECTS WITH, NOT THE UNDERLYING SOURCE CODE, EVEN THOUGH  
10:03AM 22 THAT CAN BE READ AS WELL.

10:03AM 23 MR. FERRALL: TRUE.

10:03AM 24 THE COURT: SO I GUESS I'M JUST NOT PERSUADED ON  
10:03AM 25 THIS.

10:03AM 1 MR. FERRALL: OKAY. CAN I JUST SHOW YOU THIS.

10:03AM 2 THE COURT: YEP, LET'S KEEP GOING.

10:03AM 3 MR. FERRALL: I WANT TO TALK ABOUT THE COMPLAINT AND  
10:03AM 4 I WANT TO TALK ABOUT THE NEXT DISCOVERY RESPONSE BECAUSE, OKAY,  
10:03AM 5 SO WE ASKED CISCO'S FAIR USE CONTENTIONS, OKAY.

10:03AM 6 BASICALLY, THE INTERROGATORY SAYS, DESCRIBE THE LEGAL  
10:03AM 7 FACTUAL BASIS FOR YOUR CONTENTION THAT ARISTA'S USE IS NOT A  
10:03AM 8 FAIR USE.

10:03AM 9 AND THEN WE RECITE THE STATUTORY FACTORS OF FAIR USE, AND  
10:04AM 10 YOUR HONOR IS VERY FAMILIAR WITH THOSE. OKAY.

10:04AM 11 CISCO'S RESPONSE IS ABOUT 5 OR 8 PAGES LONG, SO I DON'T  
10:04AM 12 HAVE IT ALL, BUT THEY GO THROUGH EACH FACTOR. AND IN THE  
10:04AM 13 BEGINNING IN THE FIRST FAIR USE FACTOR, THEY DEFINE THE WORK,  
10:04AM 14 FOR PURPOSES OF THE ENTIRETY OF THIS ANSWER, ARISTA HAS USED  
10:04AM 15 AND CONTINUES TO USE CISCO'S COPYRIGHTED WORKS. FOOTNOTE:  
10:04AM 16 CISCO'S COPYRIGHTED WORKS AND CISCO'S COPYRIGHTED WORKS  
10:04AM 17 INCLUDES THE COPYRIGHTED OPERATING SYSTEMS AND RELATED  
10:04AM 18 DOCUMENTS AS SET FORTH IN PARAGRAPH 25 OF THE SECOND AMENDED  
10:04AM 19 COMPLAINT.

10:04AM 20 SO WE GO TO PARAGRAPH 25. THIS IS PARAGRAPH 25. IT'S A  
10:04AM 21 LIST OF ALL THE OPERATING SYSTEMS.

10:04AM 22 AGAIN, I'M NOT -- OF COURSE THEY COULD HAVE SAID THAT  
10:04AM 23 CISCO'S COPYRIGHTED WORKS ARE THE USER INTERFACE AND THEN  
10:04AM 24 PROCEEDED TO ANSWER THE INTERROGATORY.

10:04AM 25 THE COURT: ALL RIGHT. WELL THIS IS A LITTLE BIT --

10:05AM 1 TO ME THIS IS MORE DIRECT.

10:05AM 2 MR. FERRALL: OKAY. AND I WANTED TO ADDRESS

10:05AM 3 SOMETHING THAT IS IN CISCO'S SLIDES ON THIS, BECAUSE CISCO

10:05AM 4 CITES TO PARAGRAPH 28 IN THEIR SLIDES. I JUST WANT TO CLARIFY

10:05AM 5 SOMETHING THAT SO THERE'S NO CONFUSION HERE.

10:05AM 6 THE COURT: OKAY.

10:05AM 7 MR. FERRALL: SLIDE 7 OF CISCO'S SLIDES, QUOTES FROM

10:05AM 8 THE COMPLAINT DOWN AT THE BOTTOM.

10:05AM 9 DO YOU SEE THAT PARAGRAPH 28?

10:05AM 10 THE COURT: UH-HUH.

10:05AM 11 MR. FERRALL: OKAY. AND I DON'T HAVE THE PARAGRAPH

10:05AM 12 ON A SLIDE TO SHOW, BUT THIS IS ACTUALLY WHAT PARAGRAPH 28

10:05AM 13 SAYS. IT BEGINS, "THE CISCO IOS COPYRIGHTED WORKS," NOW YOU

10:05AM 14 SEE THAT'S DEFINED IN PARAGRAPH 25, WHICH IS ON THE SCREEN, AS

10:06AM 15 ALL OF THE OPERATING SYSTEMS.

10:06AM 16 OKAY. PARAGRAPH 28 SAYS -- ARE YOU WITH ME?

10:06AM 17 THE COURT: SO WHICH SLIDE AM I SUPPOSED TO BE

10:06AM 18 LOOKING AT?

10:06AM 19 MR. FERRALL: WE ARE LOOK THE AT CISCO'S SLIDE 7.

10:06AM 20 THE COURT: I HAVE THAT AND IT'S JUST THESE THREE

10:06AM 21 LINES.

10:06AM 22 MR. FERRALL: AND THE ARISTA SLIDE THAT'S UP ON THE

10:06AM 23 SCREEN.

10:06AM 24 THE COURT: YES, OKAY.

10:06AM 25 MR. FERRALL: BECAUSE PARAGRAPH 28 BEGINS WITH A

10:06AM 1 DEFINED TERM, CISCO IOS COPYRIGHTED WORKS.

10:06AM 2 UNFORTUNATELY, THAT'S IN THE COMPLAINT THAT I DON'T HAVE TO  
10:06AM 3 SHOW YOU ON THE SCREEN, AND I'M JUST READING IT TO YOU.

10:06AM 4 SO IT SAYS, "CISCO'S COPYRIGHTED WORKS (DEFINED TERMS)  
10:06AM 5 INCLUDING THEIR UNIQUE COMMAND EXPRESSIONS, UNIQUE COMMAND MODE  
10:06AM 6 STRUCTURE, PROMPTS, AS IS REPRESENTED HERE."

10:06AM 7 SO CISCO OMITTED THE FACT THAT WHAT THEY ARE QUOTING HERE  
10:06AM 8 AT THE BOTTOM OF THEIR SLIDE 7 IS ACTUALLY A PARENTHETICAL THAT  
10:07AM 9 BEGINS WITH THE WORD INCLUDING THE COMMAND EXPRESSIONS AND  
10:07AM 10 UNIQUE COMMAND, OKAY.

10:07AM 11 WHAT IS ACTUALLY EXPLAINED IN THE COMPLAINT AS AN ORIGINAL  
10:07AM 12 EXPRESSIVE WORK THAT HAD BEEN DEVELOPED OVER MANY YEARS, IS THE  
10:07AM 13 LIST OF OPERATING SYSTEMS, THE DEFINED TERM, CISCO COPYRIGHTED  
10:07AM 14 WORK.

10:07AM 15 SO I APOLOGIZE THAT I DON'T HAVE THE COMPLAINT TO SHOW YOU  
10:07AM 16 AND THE PARSE THROUGH THIS, BUT YOU WILL SEE PARAGRAPH 28 DOES  
10:07AM 17 NOT PURPORT TO SAY THAT THE USER INTERFACE ARE ORIGINAL  
10:07AM 18 EXPRESSIVE WORKS. THOSE ARE PART OF ORIGINAL EXPRESSIVE WORKS.

10:07AM 19 OKAY. SO THANK YOU FOR YOUR PATIENCE. LET ME CONTINUE  
10:07AM 20 WITH ONE MORE PART OF THAT INTERROGATORY RESPONSE. THAT WAS  
10:07AM 21 INTERROGATORY 21. IT DEFINES CISCO COPYRIGHTED WORK IN THE  
10:08AM 22 BEGINNING OF THE INTERROGATORY, THEN FACTOR FOUR, WHICH IS  
10:08AM 23 CRITICAL FOR THE WORK DEFINITION, BECAUSE AGAIN, IT TALKS ABOUT  
10:08AM 24 THE EFFECT OF THE USE UPON THE POTENTIAL MARKET FOR OR VALUE OF  
10:08AM 25 THE COPYRIGHTED WORK, CISCO BEGINS ITS ANSWER, THE COPYRIGHTED

1 WORKS AT ISSUE-CISCO'S OPERATING SYSTEMS AND ACCOMPANYING  
2 DOCUMENTS ALLOW THE SWITCHES AND ROUTERS TO WORK.

3 OKAY. AND THEN JUST TO CLARIFY THAT THE COPYRIGHTED WORK  
4 IS NOT THE INTERFACE, IT SAYS, THE COMMAND LINE INTERFACES THAT  
5 ARE THE HEART AND SOUL OF THE OPERATING SYSTEMS.

6 IN OTHER WORDS, IT'S CLARIFYING THE COMMAND LINE INTERFACES  
7 ARE NOT THE WORK, THEY ARE A PART OF THE WORK. THEY CAN, OF  
8 COURSE, TELL THE JURY THAT THEY ARE THE HEART AND SOUL AND WE  
9 WILL DISAGREE. BUT THE HEART AND SOUL IS NOT THE WHOLE THING,  
10 THE HEART AND SOUL CAN'T LIVE BY ITSELF.

11 SO AGAIN, THIS IS AT THE VERY CLOSE OF DISCOVERY, HOW  
12 ARISTA WOULD HAVE THEN SOMEHOW DETERMINED OR PREPARED EXPERT  
13 REPORTS WITH THE UNDERSTANDING THAT THE ASSERTED WORK FOR  
14 PURPOSES OF FAIR USE MARKET HARM WAS ONLY THE USER INTERFACE,  
15 IT'S JUST NOT, IT'S JUST NOT DISCLOSED HERE, YOUR HONOR.

16 AND TO YOUR CONCERN ABOUT, YOUR CONCERN ABOUT WHAT DOES  
17 THIS MEAN FOR THE CASE, FIRST OF ALL, OF COURSE CLEARLY THEY  
18 WERE ENTITLED, WE ARE NOT SAYING THEY WEREN'T ENTITLED TO TRY  
19 TO DEFINE THE WORK MORE NARROWLY AND WE COULD HAVE THE LEGAL  
20 ARGUMENT ABOUT WHETHER THAT'S RECOGNIZED UNDER THE LAW. AND I  
21 THINK MR. KWUN HAS SOME STRONG POINTS TO MAKE, I DON'T THINK  
22 THE CASE LAW REALLY SUPPORTS IT.

23 BUT THAT'S A LEGAL ARGUMENT WE WOULD HAVE HAD BASED UPON A  
24 DISCLOSURE THAT SHOULD HAVE HAPPENED LONG AGO. IT'S NOT A  
25 LEGAL ARGUMENT THAT, IT'S NOT SOMETHING THAT THEY WERE

PROHIBITED FROM DISCLOSING EARLIER IN THE CASE.

SECOND -- HERE WE ARE. FINE, THEY DIDN'T DISCLOSE IT, WE FEEL STRONGLY ABOUT THAT. JUST BECAUSE THE CASE IS ABOUT THE OPERATING SYSTEM DOESN'T MEAN THEY CAN'T ARGUE THAT IT'S THE HEART AND SOUL.

THAT'S BEEN THEIR CASE ALL ALONG IS THAT EVEN THOUGH THE WHOLE OPERATING SYSTEM IS THE WORK, THE CLI IS THE HEART AND SOUL.

THAT'S A FINE ISSUE FOR THE JURY. THEY CAN MAKE ALL OF THE ARGUMENTS THEY WANT ABOUT IT, I'M SURE THEY THINK THEY'VE GOT SOME GREAT EVIDENCE TO SUPPORT THAT THEORY.

SO IT'S CERTAINLY NOT THE CASE THAT THERE'S NOTHING FOR THE JURY TO THINK ABOUT BASED UPON THE THEORY THAT WE'VE PRESENTED ALL ALONG.

THE COURT: WELL, I JUST WANT TO MAKE SURE THAT, WELL, UNDER EITHER DEFINITION OF THE WORK, BECAUSE THESE ARE STILL ENORMOUS SCOPE INTO ALL OF THESE WORKS, THAT A JURY IS NOT IMPROPERLY GIVEN THE IMPRESSION THAT THEY JUST NEED TO COMPARE THE LITTLE DROP OF THE COPIED MATERIAL, EVEN ASSUMING EVERYTHING THAT'S ALLEGED TO HAVE BEEN COPIED OR DETERMINED TO HAVE BEEN COPIED WAS THE VAST QUANTITY OF THE WORK, BECAUSE THAT WOULD MAKE THIS RIDICULOUS, I DON'T NEED A TRIAL ON THAT ISSUE, YOU SHOULD BE SETTling IT. YOU SHOULD HAVE SETTLED IT TWO YEARS AGO IF THAT'S ALL IT WAS.

SO I'M CONCERNED THAT THERE SEEMS TO BE PLENTY ON BOTH



10:11AM 1 SIDES HERE, THESE ARE SOME SPECIFIC THINGS I DO CERTAINLY WANT  
10:11AM 2 TO HEAR FROM CISCO ON.

10:11AM 3 MR. FERRALL: WELL, AS I SAID, YOUR HONOR, I THINK  
10:11AM 4 THE THEORY THAT WE HAVE BEEN LITIGATING ALL ALONG, AND THE  
10:11AM 5 EXPERT REPORTS ARE REplete WITH THIS, CISCO SAYS THE USER  
10:11AM 6 INTERFACE MAY NOT BE ALL OF THE LINES OR CODE, BUT THAT'S  
10:11AM 7 IRRELEVANT BECAUSE IT'S REALLY IMPORTANT.

10:11AM 8 AND THEY ARE GOING TO CITE TO LOTS OF DOCUMENTS, AND THEIR  
10:11AM 9 EXPERT IS GOING TO SAY IT'S REALLY IMPORTANT, AND THEY ARE  
10:12AM 10 GOING TO SAY THAT ARISTA ADMITS THAT IT'S REALLY IMPORTANT, AND  
10:12AM 11 WE ARE GOING TO SAY -- WELL ACTUALLY, WE DIDN'T REALLY SAY.

10:12AM 12 SO THAT'S A GREAT FACTUAL BATTLE FOR TRIAL. IT'S  
10:12AM 13 CERTAINLY -- THAT'S THE WAY ALL OF THE EXPERT REPORTS HAVE BEEN  
10:12AM 14 PREPARED IN THIS CASE, INCLUDING DR. BLACK, WE SAW THE QUOTE  
10:12AM 15 ABOUT -- I MEAN, DR. BLACK, ABSOLUTELY HAS ANALYZED ALL OF THE  
10:12AM 16 NON-ASSERTED ASPECTS OF ARISTA'S OPERATING SYSTEM TO EXPLAIN  
10:12AM 17 TRANSFORMATIVE USE. HIS OPINION IS ALL ABOUT --

10:12AM 18 THE COURT: I'M NOT CONCERNED ABOUT ARISTA'S WORKS,  
10:12AM 19 I'M CONCERNED ABOUT CISCO'S WORKS HERE.

10:12AM 20 MR. FERRALL: RIGHT. RIGHT.

10:12AM 21 AND WELL, TO COMPARE THE WAY THE WORKS PERFORM AS A WHOLE,  
10:12AM 22 THEY'RE COMPLETELY DIFFERENT IN MANY WAYS. AND WHAT DR. BLACK  
10:12AM 23 IS DOING IS HE'S TALKING ABOUT THE WAY ARISTA'S WORKS ARE  
10:12AM 24 DIFFERENT AND TRANSFORMATIVE.

10:12AM 25 BUT BEYOND THE USER INTERFACE, FOR SURE. THAT'S THE WAY

10:12AM 1 THIS CASE HAS BEEN LITIGATED FROM THE BEGINNING.

10:13AM 2 SO I THINK TO THE CONTRARY, TO FOCUS THIS CASE NOW TO SAY  
10:13AM 3 THAT ALL OF THE WORK THAT WE HAVE BEEN TALKING ABOUT, ALL OF  
10:13AM 4 THE DAMAGE REPORTS BASED UPON HARM TO LOST SALES OF PRODUCTS  
10:13AM 5 RUNNING THE ENTIRE IOS OR ENTIRE NX-OS, THAT SUDDENLY ALL OF  
10:13AM 6 THAT IS NOT RELEVANT, I'M NOT SURE HOW WE TRY THE CASE,  
10:13AM 7 FRANKLY.

10:13AM 8 THE COURT: WELL, I'M SURE YOU ARE COMPLETELY READY  
10:13AM 9 TO TRY THE CASE THAT WAY.

10:13AM 10 YOU KNOW -- BUT SO, IN OTHER CASES WHERE THE ALLEGATION IS  
10:13AM 11 THAT THE SOURCE CODE HAS BEEN COPIED, THEN YOU ARE SUGGESTING  
10:13AM 12 THAT THEN THE OPERATING SYSTEM STILL IS THE WORK WITH ALL THE  
10:13AM 13 ENORMITY OF ALL THE IRRELEVANT INTERFACE? BECAUSE ALL OF THESE  
10:13AM 14 PROGRAMS HAVE INTERFACE AND SOURCE CODE.

10:13AM 15 MR. FERRALL: WELL, YES, ALTHOUGH, LOOK, OBVIOUSLY  
10:13AM 16 EVERY CASE IS DIFFERENT. BUT IN THE CASE WHERE THE SOURCE CODE  
10:13AM 17 IS TRULY COPIED, THEN THE INTERFACE INEVITABLY IS GOING TO BE  
10:14AM 18 THE SAME BECAUSE THE INTERFACE EMERGES FROM THE SOURCE CODE.  
10:14AM 19 BUT IN ANY EVENT, IT'S UP TO THE PLAINTIFF TO DEFINE THEIR CASE  
10:14AM 20 HOW THEY WANT TO.

10:14AM 21 THE COURT: I GUESS WHAT I HAVE IS A COMPLAINT THAT  
10:14AM 22 SEEMS TO WALK THROUGH SOME PRETTY GOOD DEFINITION OF THE WORK  
10:14AM 23 IN QUESTION AS BEING THE USER INTERFACE. WHAT YOU ARE SHOWING  
10:14AM 24 ME HERE ARE SOME RESPONSES TO INTERROGATORIES AND SOME, AND  
10:14AM 25 THEORIES OF DAMAGES THAT MIGHT PERSUADE ME THAT THE DISCLOSURES

10:14AM 1 WENT THE OTHER WAY.

10:14AM 2 MR. FERRALL: WELL, THE COMPLAINT ALLEGES COPYING OF  
10:14AM 3 THE USER INTERFACE FOR SURE.

10:14AM 4 THE COURT: YES.

10:14AM 5 MR. FERRALL: BUT AGAIN, LET'S GO BACK A COUPLE OF  
10:14AM 6 SLIDES, ONE SLIDE, THIS IS THE IOS COPYRIGHTED WORK. THE  
10:14AM 7 DEFINITION AT THE BOTTOM OF PARAGRAPH 25 FROM THE SECOND  
10:14AM 8 AMENDED COMPLAINT. THIS LIST OF OPERATING SYSTEMS IS THE IOS  
10:15AM 9 COPYRIGHTED WORKS.

10:15AM 10 NOW, THERE'S -- I DON'T THINK THE WORD USER INTERFACE OR  
10:15AM 11 EVEN CLI IS EVEN IN THIS PARAGRAPH.

10:15AM 12 SO AGAIN, WE'VE GOT TO KEEP CLEAR, IT'S ONE THING TO SAY  
10:15AM 13 WHAT WAS COPIED WAS THE CLI, BUT WHEN IT COMES TO WHAT IS  
10:15AM 14 DEFINED AS THE WORKS, THERE'S JUST NEITHER IN THE COMPLAINT NOR  
10:15AM 15 IN INTERROGATORIES IS THERE SOMETHING THAT ANY -- THAT WE COULD  
10:15AM 16 HAVE POSSIBLY HAVE GOTTEN NOTICE OF THAT THIS WAS GOING TO  
10:15AM 17 BE -- THE USER INTERFACE ALONE WAS GOING TO BE THE WORK.

10:15AM 18 SO WITH THAT, YOUR HONOR, I'M OBVIOUSLY HAPPY TO ANSWER ANY  
10:15AM 19 FURTHER QUESTIONS, OTHERWISE I WOULD LIKE TO TURN IT OVER TO  
10:15AM 20 MR. KWUN TO TALK ABOUT THE LEGAL QUESTIONS A LITTLE BIT.

10:15AM 21 THE COURT: OKAY. MR. KWUN.

10:15AM 22 MR. PAK, I THINK I WILL LET YOU COME BACK ON ALL OF THIS AT  
10:16AM 23 ONCE.

10:16AM 24 MR. PAK: WONDERFUL. THANK YOU.

10:16AM 25 MR. KWUN: YOUR HONOR, I DO WANT TO GET INTO THE

10:16AM 1 QUESTION OF WHETHER OR NOT THERE IS A SEPARATE WORK, BUT BEFORE  
10:16AM 2 I GET THERE, YOU HAD ASKED A QUESTION EARLIER ABOUT WHETHER OR  
10:16AM 3 NOT THERE'S A DE MINIMUS -- FREE-STANDING DE MINIMUS DEFENSE.

10:16AM 4 SO I DID WANT TO CALL YOUR ATTENTION TO THE ORACLE CASE.  
10:16AM 5 AND IN 2012 WHEN THE PRIMA FACIE INFRINGEMENT CASE WAS TRIED,  
10:16AM 6 THERE WAS A DE MINIMUS DEFENSE THAT WAS, THAT THE JURY WAS  
10:16AM 7 INSTRUCTED ON. AND ON APPEAL, ORACLE CHALLENGED WHETHER THERE  
10:16AM 8 WAS A FREESTANDING DE MINIMUS DEFENSE. AND THE COURT DID NOT  
10:16AM 9 HOLD THAT THERE WAS NO FREESTANDING DE MINIMUS DEFENSE.

10:16AM 10 THE COURT: AS AN AFFIRMATIVE DEFENSE, MR. KWUN?

10:16AM 11 MR. KWUN: AS AN AFFIRMATIVE DEFENSE. I HAVE TO  
10:16AM 12 ACTUALLY LOOK AND SEE EXACTLY HOW THAT WAS FRAMED.

10:16AM 13 THE COURT: IT'S ONE OF THOSE TRICKY ISSUES THAT  
10:17AM 14 EXIST IN MANY AREAS OF THE LAW AS TO WHETHER IT'S SIMPLY A  
10:17AM 15 DEFENSE THAT NEGATES AN ESSENTIAL ELEMENT.

10:17AM 16 MR. KWUN: I THINK THAT YOU ARE ACTUALLY CORRECT THAT  
10:17AM 17 IT PROBABLY IS FRAMED AS WHETHER OR NOT THERE IS A PRIMA FACIE  
10:17AM 18 CASE, NOT AFFIRMATIVE DEFENSE TO THE PRIMA FACIA CASE.

10:17AM 19 BUT I ACTUALLY HAVE, I DON'T HAVE THE ACTUAL DEFENSE CHARGE  
10:17AM 20 BEFORE ME, BUT I DO HAVE FROM THE FEDERAL CIRCUIT OPINION, AT  
10:17AM 21 750 F.3D PAGE 1351, JUST A SHORT QUOTATION FROM THE FEDERAL  
10:17AM 22 CIRCUIT ABOUT WHAT GOOGLE'S ALLEGATIONS WERE WITH REGARD TO THE  
10:17AM 23 DE MINIMUS DEFENSE AND WITH RESPECT TO A CERTAIN PART OF THE  
10:17AM 24 INFRINGEMENT CASE.

10:17AM 25 AND THEY QUOTE, JUDGE ALSUP'S FINAL CHARGE AS SAYING: WITH

10:17AM 1 RESPECT TO THE INFRINGEMENT ISSUES CONCERNING THE RANGE CHECK  
10:17AM 2 AND OTHER SIMILAR FILES, GOOGLE AGREES THAT THE ACCUSED LINES  
10:17AM 3 OF CODE AND COMMENTS CAME FROM THE COPYRIGHTED MATERIAL, BUT  
10:17AM 4 CONTENDS THAT THE AMOUNTS INVOLVED WERE SO NEGLIGIBLE AS TO BE  
10:17AM 5 DE MINIMUS AND THUS SHOULD BE EXCUSED.

10:18AM 6 AND TO ANOTHER QUESTION YOU HAD ABOUT THE DE MINIMUS  
10:18AM 7 DEFENSE, THERE ARE TWO ASPECTS TO A DE MINIMUS DEFENSE IN THE  
10:18AM 8 NINTH CIRCUIT, ACTUALLY ANYWHERE, BUT CERTAINLY IN THE  
10:18AM 9 NINTH CIRCUIT, AND THAT'S BOTH A QUALITATIVE AND A QUANTITATIVE  
10:18AM 10 ASPECT.

10:18AM 11 AND FOR THE DEFENSE TO SUCCEED, THE DEFENSE HAS TO PROVE A  
10:18AM 12 LACK OF QUALITATIVE AND QUANTITATIVE IMPORTANCE.

10:18AM 13 SO --

10:18AM 14 THE COURT: WHICH IS EXACTLY THE SAME AS IN THE FAIR  
10:18AM 15 USE AFFIRMATIVE DEFENSE.

10:18AM 16 MR. KWUN: BOTH OF THOSE ASPECTS COME INTO FACTOR 3,  
10:18AM 17 THEY ARE -- IT IS A DIFFERENT QUESTION BECAUSE YOU WOULD NEVER  
10:18AM 18 REACH THE ISSUE OF FAIR USE IF THERE WAS A DE MINIMUS DEFENSE.

10:18AM 19 THE COURT: CLEARLY. I UNDERSTAND THAT.

10:18AM 20 MR. KWUN: THE THRESHOLD IS DIFFERENT.

10:18AM 21 THE COURT: I UNDERSTAND THAT PERFECTLY. BUT --

10:18AM 22 MR. KWUN: SO WHAT I WOULD SAY IT'S PART OF THE PRIMA  
10:18AM 23 FACIE INFRINGEMENT CASE, AND THEN IF YOU GET PAST THAT, THERE'S  
10:18AM 24 A SECOND QUESTION OF NOT IS IT DE MINIMUS, BUT IS IT  
10:18AM 25 SUBSTANTIAL.

10:18AM 1 AND I KNOW, AND WE HAVE THAT WORD SUBSTANTIAL OR  
10:18AM 2 SUBSTANTIALLY COMING UP ALL OVER THE PLACE.

10:19AM 3 THE COURT: DIFFERENT SIDE OF THE SAME COIN HERE.

10:19AM 4 MR. KWUN: I AGREE WITH YOUR HONOR THAT SOMEBODY  
10:19AM 5 WOULD DO WELL TO RESTATE WHAT THESE DOCTRINES ARE TO USE MORE  
10:19AM 6 DIFFERENT WORDS, BUT WE ARE KIND OF STUCK WITH THAT.

10:19AM 7 THE COURT: AND THERE ARE ONLY A FEW WORDS THAT CAN  
10:19AM 8 BE USED.

10:19AM 9 MR. KWUN: SO LET ME TURN TO THIS QUESTION OF WHETHER  
10:19AM 10 OR NOT THERE IS A SEPARATE WORK WHICH IS THE USER INTERFACE.

10:19AM 11 AND CISCO HAS CITED A NUMBER OF CASES, BUT I THINK WE WOULD  
10:19AM 12 ALL AGREE THAT REALLY IT BOILS DOWN TO THE CITATION OF A SINGLE  
10:19AM 13 CASE BECAUSE ALL BUT ONE OF THOSE CASES THEMSELVES RELY ON THE  
10:19AM 14 MANUFACTURER TECHNOLOGIES V. CAMS CASE.

10:19AM 15 SO THEN THE QUESTION IS, WHAT WAS THE DISTRICT COURT IN  
10:19AM 16 CONNECTICUT, ITSELF, RELYING ON? AND IN THAT DECISION, THE  
10:19AM 17 COURT WAS ADDRESSING THE ISSUE OF REGISTRATION OF A COMPUTER  
10:19AM 18 PROGRAM, AND WHAT PROTECTION THE DISPLAYS CREATED BY THAT  
10:19AM 19 PROGRAM GET.

10:19AM 20 AND IS THE 706 F.SUPP AT 991, THE COURT MENTIONS A QUOTE,  
10:20AM 21 RECENT DECISION OF THE COPYRIGHT OFFICE. AND THAT RECENT  
10:20AM 22 DECISION SAID THAT A SINGLE REGISTRATION OF A COMPUTER PROGRAM  
10:20AM 23 EXTENDS PROTECTION TO SCREEN DISPLAYS THAT CONTAIN ORIGINAL  
10:20AM 24 EXPRESSION.

10:20AM 25 SO THAT RECENT DECISION WAS A 1988 DECISION FROM THE

1 COPYRIGHT OFFICE. JUNE 1988 DECISION OF THE COPYRIGHT OFFICE.  
2 AND I HAVE A COPY OF IT HERE. WE PREVIOUSLY SUBMITTED IT AT  
3 ECF 635-4.

4 BUT I HAVE A COPY OF IT WHICH I CAN HAND UP HERE. I'VE HAD  
5 SOME -- I'VE TAKEN THE LIBERTY OF HIGHLIGHTING A FEW POINTS ON  
6 IT. BUT I WANT TO START WITH THE SUMMARY ON THE FRONT ON THE  
7 FIRST PAGE, FIRST COLUMN.

8 AND THE SUMMARY SAYS THAT THE COPYRIGHT OFFICE OF THE  
9 LIBRARY OF CONGRESS HAS DETERMINED THAT ALL COPYRIGHTABLE  
10 EXPRESSION OWNED BY THE SAME CLAIMANT AND EMBODIED IN A  
11 COMPUTER PROGRAM IS CONSIDERED A SINGLE WORK AND SHOULD BE  
12 REGISTERED ON A SINGLE APPLICATION FORM.

13 AND I HAVE AN EXCERPT OF THAT UP ON THE SCREEN AS WELL.  
14 BUT THERE REALLY ARE TWO POINTS THAT THAT SUMMARY GETS AT.

15 ONE IS THERE WAS AN ONGOING QUESTION OF WHETHER OR NOT THE  
16 REGISTRATION OF THE SOURCE CODE DID ANYTHING TO GRANT  
17 PROTECTION FOR THE SCREEN DISPLAYS.

18 AND HERE THEY ARE SAYING YES, WHEN YOU FILE THAT SINGLE  
19 REGISTRATION, IF THOSE SCREEN DISPLAYS ARE POTENTIALLY  
20 PROTECTED BY COPYRIGHT, YOU HAVE TO REGISTER.

21 THERE'S A SECOND QUESTION THOUGH WHICH IS, HOW MANY WORKS  
22 HAVE YOU REGISTERED?

23 AND WHAT WE HAVE HEARD FROM CISCO IS THAT BY FILING ONE  
24 REGISTRATION THEY HAVE CREATED WHAT THE DISTRICT COURT CALLED  
25 THE LEGAL FICTION OF TWO REGISTRATIONS.

1 BUT HERE THE 1988 COPYRIGHT DECISION THAT THE COURT WAS  
2 RELYING ON SAYS IT'S CONSIDERED A SINGLE WORK.

3 AND IF YOU LOOK AT THE COPYRIGHT OFFICE'S REASONING, IT  
4 ACTUALLY BEARS THIS OUT. AND ON PAGE 3 OF THE DECISION THAT I  
5 HANDED UP IN COLUMN 1, PAGE 3 THEY ARE TALKING ABOUT THE FACT  
6 THAT THEY HEARD FROM A NUMBER OF INTERESTED WITNESSES ON THIS  
7 ISSUE, WHO TOOK A VARIETY OF POSITIONS.

8 AND AT THE END OF THE THIRD FULL PARAGRAPH, WHICH I'VE  
9 HIGHLIGHTED IN YELLOW IN THE HAND-UP, THEY SAY THAT ALL  
10 WITNESSES AGREED THAT THE SAME SCREEN DISPLAYS CAN BE GENERATED  
11 BY SUBSTANTIALLY DIFFERENT COMPUTER PROGRAM CODE.

12 SO THIS WAS THE ISSUE THAT ULTIMATELY CAUSED THE DISTRICT  
13 COURT TO SAY, YOU KNOW, WE REALLY NEED TO CONSIDER THESE TO BE  
14 SEPARATE WORKS BECAUSE THE SAME SCREEN DISPLAYS CAN BE CREATED  
15 BY DIFFERENT COMPUTER CODE.

16 THAT WAS BEFORE THE COPYRIGHT OFFICE, ALL THE PEOPLE WHO  
17 HAD DISPUTES OVER WHAT THEY SHOULD DO ALL AGREED THAT THAT WAS  
18 TRUE.

19 AND THE COPYRIGHT OFFICE THEN SAID, EVEN ACCEPTING THAT THE  
20 NATURE OF AUTHOR SHIP IN SCREENS MAY BE DIFFERENT FROM COMPUTER  
21 PROGRAM CODE AUTHOR SHIP THIS DOESN'T ALTER THE FACT THAT THE  
22 COMPUTER PROGRAM CODE AND SCREEN DISPLAYS ARE INTEGRALLY  
23 RELATED AND ORDINARILY FORM A SINGLE WORK.

24 NOW IT DOES SAY ORDINARILY AND I WILL GET TO A LITTLE LATER  
25 WHAT THAT MEANS AND HOW IT COULD POSSIBLY BE DIFFERENT AND WHY



10:23AM 1 WE HAVE A FAILURE OF PROOF ON CISCO'S PART TO SHOW THAT IT  
10:23AM 2 ACTUALLY IS DIFFERENT.

10:23AM 3 AND THEY GO ON TO SAY RIGHT AFTER THAT, BACK IN YELLOW ON  
10:23AM 4 THE HIGHLIGHTED COPY, INDEED THOSE COMMENTATORS WHO FAVOR  
10:23AM 5 EITHER SINGLE OR SEPARATE REGISTRATION MUST CONCEDE THAT THE  
10:23AM 6 PROGRAM CODE AND SCREENS ARE CONCEPTUALLY A SINGLE WORK.

10:23AM 7 SO THE COPYRIGHT'S OFFICE ON POSITION IS PRETTY CLEAR AND  
10:23AM 8 FRANKLY IT'S A LITTLE CONFUSING HOW WE ENDED UP WHERE WE ARE ON  
10:24AM 9 THE DISTRICT COURT'S DECISION.

10:24AM 10 THE COURT: BUT THE DISTRICT COURT'S DECISION TAKES A  
10:24AM 11 VERY DIFFERENT VIEW OF THAT LANGUAGE.

10:24AM 12 MR. KWUN: WELL, YOUR HONOR, THE DISTRICT COURT DOES  
10:24AM 13 NOT ACTUALLY CITE OR QUOTE THE SINGLE WORK.

10:24AM 14 THE COURT: NO, IT DOESN'T.

10:24AM 15 MR. KWUN: SO THE ONLY THING I CAN THINK IS THAT  
10:24AM 16 MAYBE IT MISSED IT.

10:24AM 17 THE KEY ISSUE THAT WAS IN DISPUTE BEFORE THE DISTRICT COURT  
10:24AM 18 WAS LESS THE ARE THERE TWO SEPARATE WORKS POINT AND MORE THE,  
10:24AM 19 DID THE REGISTRATION OF THE SOURCE CODE ACTUALLY ACCOMPLISH  
10:24AM 20 ANYTHING FOR THE SCREEN DISPLAYS.

10:24AM 21 SO --

10:24AM 22 THE COURT: SO THAT IS ANSWERED BY THIS -- SO IF YOU  
10:24AM 23 REGISTER YOUR SOURCE CODE, YOU ALSO ARE PROTECTING YOUR USER  
10:24AM 24 INTERFACE, THAT'S WHAT THIS WOULD SAY.

10:24AM 25 MR. KWUN: THAT IS ONE THING IT SAYS. IT SAYS YOU

10:24AM 1 ARE PROTECTING THE USER INTERFACE INsofar AS IT'S PROTECTABLE.

10:24AM 2 THE COURT: AND YOU DON'T NEED TO REGISTER YOUR  
10:24AM 3 SCREEN SHOTS SEPARATELY.

10:24AM 4 MR. KWUN: THAT'S RIGHT. AS A MATTER OF FACT, THEY  
10:24AM 5 WOULD RATHER YOU DON'T.

10:24AM 6 THE COURT: THAT'S RIGHT.

10:24AM 7 SO I GUESS I'M JUST CONCERNED THAT MAY BE AS FAR AS THE  
10:24AM 8 COPYRIGHT OFFICE WAS GOING. WHAT DOES AN OWNER NEED TO DO TO  
10:25AM 9 PROTECT BOTH THEIR SOURCE CODE AND THEIR USER INTERFACE AND THE  
10:25AM 10 COPYRIGHT OFFICE SAYS, FILE IT ONCE, YOU GET PROTECTION ON ALL  
10:25AM 11 OF IT.

10:25AM 12 MR. KWUN: YOU GET PROTECTION ON ALL OF IT AS A  
10:25AM 13 SINGLE WORK. REPEATED THREE TIMES.

10:25AM 14 THE COURT: SO THEN THAT BEGS THE QUESTION OF ARE  
10:25AM 15 THEY USING THE WORD WORK THE SAME AS WE DO HERE IN COURT TO  
10:25AM 16 LITIGATE THE ISSUE, AND HOW DO I KNOW.

10:25AM 17 MR. KWUN: SO FOR THAT, LET'S ACTUALLY TURN TO WHAT  
10:25AM 18 THE NINTH CIRCUIT'S TEST IS FOR WHEN YOU CAN HAVE A SEPARATE  
10:25AM 19 WORK. SO THIS GOES TO THE POINT OF ORDINARILY, I THINK.

10:25AM 20 THE COURT: AND WHERE -- DO YOU HAVE A SLIDE?

10:25AM 21 MR. KWUN: I'M GOING TO BACK TO THE SLIDES. I WILL  
10:25AM 22 GO STRAIGHT TO SLIDE 31.

10:25AM 23 ACTUALLY, LET ME SEE HERE, I AM GOING TO GO TO SLIDE, MAYBE  
10:25AM 24 32.

10:26AM 25 THE COURT: THE ECONOMIC VALUE ISSUE?

10:26AM 1 MR. KWUN: YEAH, YEAH.

10:26AM 2 MR. VAN NEST: IT'S UP.

10:26AM 3 MR. KWUN: YES, HERE WE ARE, YES.

10:26AM 4 THIS IS FROM THE MONGE V. MAYA CASE IN THE NINTH CIRCUIT,  
10:26AM 5 AND THE ISSUE THERE WAS WHETHER OR NOT THERE'S 400 WEDDING  
10:26AM 6 PHOTOS AND WHETHER OR NOT THEY SHOULD BE TREATED AS A SEPARATE  
10:26AM 7 WORK OR AS 400 SEPARATE WORKS.

10:26AM 8 THE NINTH CIRCUIT SAID THAT EACH PHOTO IS A SEPARATE WORK  
10:26AM 9 AND WHY, BECAUSE IT CAN LIVE ITS OWN COPYRIGHT LIFE AND HAS  
10:26AM 10 INDEPENDENT ECONOMIC VALUE AND IS IN ITSELF VIABLE.

10:26AM 11 SO THIS WAS THE ISSUE THAT THEY WERE CONFRONTING WAS WHAT  
10:26AM 12 TO DO ON FACTOR THREE OF FAIR USE.

10:26AM 13 AND CISCO'S RESPONSE IN THE BRIEFING ON A WORK WAS TO SAY  
10:26AM 14 WELL THAT'S A FAIR USE FACTOR 3 CASE, THAT'S A DIFFERENT ISSUE.

10:26AM 15 BUT WHAT YOU HEARD MR. PAK SAY UP HERE TODAY IS HE ACCUSED  
10:26AM 16 ARISTA OF TAKING INCONSISTENT POSITIONS OF WHAT WORK -- A WORK  
10:27AM 17 IS, AND SAID THAT WE NEED TO HAVE A CONSISTENT DEFINITION OF  
10:27AM 18 THE WORK.

10:27AM 19 THIS TELLS US WHAT THE DEFINITION OF THE WORK IS FOR FAIR  
10:27AM 20 USE FACTOR THREE. WE CAN'T HAVE A DIFFERENT DEFINITION OF A  
10:27AM 21 WORK FOR THE PRIMA FACIE CASE, THE AFFIRMATIVE DEFENSE IS, OF  
10:27AM 22 COURSE, AN AFFIRMATIVE DEFENSE TO THE PRIMA FACIE CASE.

10:27AM 23 THE COURT: SURE, SURE.

10:27AM 24 MR. KWUN: AND INDEED, THE THIRD FAIR USE FACTOR IS  
10:27AM 25 THE AMOUNT AND SUBSTANTIALITY OF THE PORTION USED IN RELATION

10:27AM 1 TO THE COPYRIGHTED WORK AS A WHOLE.

10:27AM 2 THE COURT: SO LET ME JUST -- I HAVE THOUGHT ABOUT  
10:27AM 3 THIS, BECAUSE YOU BRIEFED THIS ISSUE FOR ME IN YOUR BRIEF ON  
10:27AM 4 THIS ISSUE.

10:27AM 5 IF I'M UNDERSTANDING IT CORRECTLY, THE USER INTERFACE IS  
10:27AM 6 ONLY THE REFLECTION IN ENGLISH OR READABLE FORM OF THE  
10:27AM 7 UNDERLYING CODE, IT DOESN'T LIVE ON ITS OWN. IT CAN'T BE  
10:27AM 8 GENERATED.

10:27AM 9 MR. KWUN: CORRECT.

10:27AM 10 THE COURT: IT CAN'T BE GENERATED ON ITS OWN, IT  
10:28AM 11 NEEDS CODE TO EXIST.

10:28AM 12 MR. KWUN: NOT ONLY DOES IT NEED CODE TO EXIST, BUT  
10:28AM 13 IT'S A PICTURE OF SOME OF THE CODE. AND IT HAS NO REAL  
10:28AM 14 PURPOSE.

10:28AM 15 IT'S KIND OF LIKE IF YOU HAVE A STEREO RECEIVER, AND YOU  
10:28AM 16 LOOK AT THAT FRONT PANEL, AND IT'S GOT SOME KNOBS ON IT, THOSE  
10:28AM 17 KNOBS ARE THE USER INTERFACE TO THAT STEREO RECEIVER.

10:28AM 18 AND IF YOU TRY TO RIP THE FRONT PANEL OFF OF THE STEREO,  
10:28AM 19 AND ALL THE WIRES THAT CONNECT TO THE REST OF THE RECEIVER ARE  
10:28AM 20 GONE, YOU NO LONGER HAVE ANYTHING THAT HAS INDEPENDENT ECONOMIC  
10:28AM 21 VALUE. YOU HAVE A BROKEN PIECE OF METAL.

10:28AM 22 AND THAT BROKEN PIECE OF METAL IS NOT ACTUALLY A REFLECTION  
10:28AM 23 OF THE ENTIRE STEREO RECEIVER, THERE'S A WHOLE LOT OF STUFF  
10:28AM 24 BACK THERE THAT IS NOT REFLECTED IN THAT FRONT PANEL.

10:28AM 25 THE FRONT PANEL IS A WAY FOR THE USER TO CONTROL THE

1 PORTIONS OF IT THAT ARE CONTROLLABLE BY THE USER. BUT  
2 APPROXIMATELY SPEAKING, YES. SO I DO THINK THE POINT IS IT HAS  
3 NO WAY OF LIVING SEPARATELY.

4 AND INDEED, IF YOU LOOK AT WHAT CISCO HAS SAID THROUGHOUT  
5 THIS CASE, THAT'S WHAT THEY HAVE SAID. AND IF WE CAN GO TO  
6 SLIDE 33, THIS IS FROM THE CISCO COMPLAINT, THE CISCO COMPLAINT  
7 AT PARAGRAPH 27, SAYS THE CLI IS A KEY COMPONENT OF CISCO'S  
8 IOS.

9 SO IT'S NOT THAT SOMETHING THAT HAS A SEPARATE LIFE HAS  
10 INDEPENDENT ECONOMIC VALUE THAT IS ITSELF VIABLE, RATHER IT IS  
11 A PART.

12 THE COURT: SO I'M STILL, BECAUSE I THINK YOUR LEGAL  
13 ARGUMENT IS REALLY ONE THAT I -- THAT IS IMPORTANT FOR ME, AND  
14 IT MAY BE RESINATING, THIS INDEPENDENT ECONOMIC VALUE ARGUMENT.

15 OBVIOUSLY THIS IS A NINTH CIRCUIT CASE, BUT IT HAS TO DO  
16 WITH PHOTOGRAPHS. THERE ARE OTHER CASES THAT HAVE TO DO WITH A  
17 SERIES OF, IT MAY BE CHAPTERS OR ESSAYS IN A BOOK THAT HAVE  
18 INDEPENDENT VALUE.

19 THERE'S NOTHING IN THE NINTH CIRCUIT IN ANY DISTRICT COURT  
20 CASE THAT HAS DEALT WITH A COMPUTER PROGRAM ON THIS LEVEL, IT  
21 SEEMS SO ORDINARY, I'M SURPRISED.

22 MR. KWUN: WELL, YOUR HONOR, I WOULD SAY THAT IT'S A  
23 RATHER NOVEL PROPOSITION TO SAY THAT THIS INTERFACE WHICH IS  
24 REALLY NOT SEPARABLE IN ANY WAY, SHAPE OR FORM FROM THE REST OF  
25 THE WORK COULD SOMEHOW STAND ALONE. THAT'S WHY YOU HAVE THINGS

10:30AM 1 LIKE TELEVISION EPISODES.

10:30AM 2 THE COURT: SO LET ME ASK YOU THIS, YOU ARE TELLING  
10:30AM 3 ME THAT DIFFERENT CODE CAN BE USED TO GENERATE THE IDENTICAL  
10:30AM 4 USER INTERFACE, CORRECT?

10:30AM 5 MR. KWUN: YES, YOUR HONOR.

10:30AM 6 THE COURT: SO ISN'T THAT ACTUALLY THE DEFINITION OF  
10:30AM 7 ITS SEPARATE ECONOMIC VALUE IS THAT IN ORDER FOR THESE -- TO  
10:30AM 8 SELL THE PRODUCT OR THE SWITCH, USING WHAT HAS BEEN KNOWN IN  
10:30AM 9 THE INDUSTRY, AND I'M GOING TO SAY BEFORE CISCO CAME ON TO THE  
10:30AM 10 SCENE WITH ITS IOS, BECAUSE I DON'T WANT TO GET INVOLVED IN  
10:30AM 11 THE, IN ITS COPYRIGHTED WORKS, THAT IF A COMPANY, IT'S THE  
10:30AM 12 VALUE IS NOT IN THE CODE, THE VALUE IS IN THE USER INTERFACE.

10:31AM 13 SO THAT'S ACTUALLY WHERE THE VALUE IS, ANY CODE CAN BE  
10:31AM 14 WRITTEN, ANY CODE THAT WILL GENERATE THIS SCREEN IS WHAT THE  
10:31AM 15 VALUE IS. THE VALUE IS THE SCREEN SHOT.

10:31AM 16 MR. KWUN: SO I WOULD SAY THAT ALL OF THE USERS OF  
10:31AM 17 THESE SWITCHES WOULD BE A LITTLE SURPRISED TO FIND OUT THAT THE  
10:31AM 18 KNOBS ON THE FRONT ARE WHERE THE VALUE IS. THEY LIKE HAVING  
10:31AM 19 KNOBS BUT THE VALUE IS HAVING A SWITCH THAT RUNS QUICKLY OR  
10:31AM 20 WHATEVER.

10:31AM 21 THE COURT: WELL NO I'M ONLY TALKING WITH THE SOURCE  
10:31AM 22 CODE THAT GENERATES THE USER INTERFACE, THERE'S A LOT OF SOURCE  
10:31AM 23 CODE THAT'S DOING A LOT OF OTHER STUFF IN THIS IOS; ISN'T THAT  
10:31AM 24 RIGHT?

10:31AM 25 MR. KWUN: THAT'S TRUE, ALTHOUGH I DO ULTIMATELY WANT

1 TO POINT OUT THAT THE INTERFACE WE ARE TALKING ABOUT HERE IS  
2 DIFFERENT THAN THESE SCREEN DISPLAYS AND THINGS LIKE THAT.

3 THE SCREEN DISPLAYS GET SHOWN TO YOU ON THE SCREEN. YOU  
4 SEE THEM AND YOU CHOOSE FROM THEM, IT DIRECTS YOUR ACTION.  
5 WHAT YOU SEE ON ONE OF THESE SWITCHES IS YOU SEE A BLANK LINE.

6 SO WHAT WE ARE TALKING ABOUT -- WHAT WE ARE TALKING ABOUT  
7 IS THE USER INTERFACE, IS ACTUALLY NOT WHAT IS SHOWN TO THE  
8 USER FOR THEM TO CHOOSE HOW TO DO SOMETHING. IT'S ACTUALLY  
9 WHAT THE USER TYPES IN.

10 THE USER CAN TYPE IN THINGS FROM WHAT WE ARE CALLING THE  
11 USER INTERFACE, AND THEN THE SWITCH WILL THEN UNDERSTAND WHAT  
12 YOU ARE SAYING. IT'S ACTUALLY ALMOST A MIRROR IMAGE OF THESE  
13 CLASSIC USER INTERFACES.

14 THE COURT: WHAT WAS DESCRIBED TO ME WAY BACK IS IT  
15 IS THE SPECIAL COMMON LANGUAGE THAT ENGINEERS CAN USE TO OBTAIN  
16 THE RESULT THEY ARE LOOKING FOR.

17 MR. KWUN: YES.

18 SO IT IS AN INTERFACE IN SOME SENSE, BUT I JUST WANTED TO,  
19 SINCE WE HAVE ALL OF THESE CASES THAT ARE ABOUT SCREEN DISPLAYS  
20 OR THE MACINTOSH USER INTERFACE, THAT IT IS A LITTLE BIT  
21 DIFFERENT THAN WHAT WE ARE TALKING ABOUT HERE.

22 BUT TO GET TO THIS POINT OF WHETHER OR NOT IT MATTERS THAT  
23 YOU COULD CREATE THE SAME SCREEN DISPLAY OR SAME USER INTERFACE  
24 USING DIFFERENT CODE, I WANT TO OFFER YOU THE EXAMPLE OF A  
25 SITUATION WHERE SOMEONE WRITES A NOVEL IN ENGLISH AND THEN

10:33AM 1 SOMEBODY DECIDES I WANT TO CAPTURE THE ITALIAN MARKET AND THEY,  
10:33AM 2 WITHOUT ANY AUTHORIZATION WHATSOEVER, TRANSLATE IT INTO  
10:33AM 3 ITALIAN.

10:33AM 4 AND THE COPYRIGHTED WORK THAT IS ALLEGEDLY INFRINGED THAT  
10:33AM 5 THAT CASE, WHEN INEVITABLY THEY BRING THE COPYRIGHT  
10:33AM 6 INFRINGEMENT CASE, THE COPYRIGHTED WORK IS NOT SOME NEW  
10:33AM 7 ABSTRACTION THAT THE PLAINTIFF GETS TO CREATE SAYING, WELL, I'M  
10:33AM 8 NOT SAYING THAT THE BOOK I WROTE IS THE COPYRIGHTED WORK, I'M  
10:33AM 9 INSTEAD SAYING THE COPYRIGHTED WORK ARE THE IDEAS THAT ARE  
10:33AM 10 EXPRESSED OR THE CONCEPTS AND THE PLOT THAT IS EXPRESSED THERE.

10:33AM 11 THEY ARE STUCK, FOR BETTER OR WORSE, WITH THE COPYRIGHTED  
10:33AM 12 WORK THEY ACTUALLY HAVE WHICH IS THE ENGLISH LANGUAGE NOVEL.

10:33AM 13 AND THE DEFENDANT IS FREE TO SAY, EVERY SINGLE ONE OF MY  
10:33AM 14 WORDS IS DIFFERENT. IT'S NOT GOING TO BE A VERY GOOD ARGUMENT,  
10:33AM 15 BUT THEY ARE FREE TO SAY THAT. THEY ARE FREE TO SAY THAT.

10:33AM 16 THE FACT THAT THE THING THAT WAS ACTUALLY COPIED IS NOT THE  
10:33AM 17 LITERAL WORDS OF THE UNDERLYING SOURCE CODE IS, DOES NOT MEAN  
10:34AM 18 THAT THE SOURCE CODE FOR THE ENTIRE OPERATING SYSTEM IS NOT THE  
10:34AM 19 WORK. IT MEANS THAT THEY HAVE A DIFFERENT THEORY OF COPYING  
10:34AM 20 THAN ONE MIGHT HAVE.

10:34AM 21 THE COURT: OR IT'S JUST A DIFFERENT WORK, IT'S JUST  
10:34AM 22 THAT IT CAN BE AN ENTIRE WORK OF THE IOS, IT COULD BE -- THE  
10:34AM 23 SOURCE CODE COULD BE A SEPARATE WORK OR THE USER INTERFACE.  
10:34AM 24 THAT'S WHAT CISCO IS ARGUING.

10:34AM 25 I'M TRYING TO DETERMINE WHETHER I CAN SPLIT THEM, THAT'S



1 THE WHOLE ISSUE HERE. AND THIS SEPARATE ECONOMIC VALUE DOES  
2 SEEM TO BE A PREMISE THAT I NEED TO FOLLOW IN THE  
3 NINTH CIRCUIT.

4 MR. KWUN: I THINK THE OTHER THING IS, YOU KNOW, YOU  
5 WERE GETTING AT THIS POINT OF, ISN'T IT CLEAR WHEN THEY SAY THE  
6 USER INTERFACE WHAT THE HECK THEY ARE TALKING ABOUT.

7 AND THE PROBLEM IS THAT THE WAY THESE PROGRAMS ARE WRITTEN,  
8 THE WAY THESE OPERATING SYSTEMS ARE WRITTEN, THERE'S THE PART  
9 OF THE CODE THAT ACTUALLY DOES SOMETHING, THAT ACTUALLY CHANGES  
10 THE SETTING ON A GIVEN PORT OR THAT CREATES A ROUTE BETWEEN TWO  
11 POINTS ON A NETWORK. AND THEN THERE'S THE INTERFACE THAT  
12 UNDERSTANDS WHAT IT IS YOU WANT.

13 SO IT'S REALLY A TWO PART PROCESS. YOU, AS A NETWORK  
14 ENGINEER, TELL THE SWITCH WHAT YOU WANT TO DO, AND STEP 1, THE  
15 SWITCH HAS TO UNDERSTAND WHAT IT IS YOU WANT TO DO AND THEN IT  
16 HAS TO DO IT.

17 AND SO THE UNDERSTAND WHAT YOU WANT TO DO PART, THAT'S  
18 SOMEWHERE APPROXIMATELY SPEAKING, WHAT WE ARE TALKING ABOUT  
19 HERE AS THE USER INTERFACE.

20 BUT THE PROBLEM IS THERE IS NOT A CLEAN DIVISION BETWEEN  
21 WHEN YOU START DOING ONE PART -- STOP DOING ONE PART AND START  
22 DOING THE NEXT. AND WE DON'T HAVE ANY SORT OF CLEAN DEFINITION  
23 FROM THE PLAINTIFF DUE TO THE DISCOVERY ISSUES WE MENTIONED.

24 BUT MOREOVER, THE FACT THAT YOU CANNOT DIVIDE IT UP, YOU  
25 CAN'T SAY THESE 14 FILES, THESE PRECISELY ARE THE USER

10:35AM 1 INTERFACE, EVEN IF WE ARE NOT TALKING ABOUT CODE COPYING, THAT  
10:35AM 2 GOES TO THE FACT THAT THERE IS NOT A SEPARATE, A SEPARATE USER  
10:35AM 3 INTERFACE THAT HAS INDEPENDENT ECONOMIC VALUE AND IS ITSELF  
10:35AM 4 VIABLE.

10:35AM 5 THE USER INTERFACE IS FUNDAMENTALLY INTERTWINED WITH THE  
10:36AM 6 REST OF THE OPERATING SYSTEM, AND IS FUNDAMENTALLY TIED TO IT.  
10:36AM 7 IT CANNOT BE, UNDER THE NINTH CIRCUIT'S TEST IT CANNOT BE A  
10:36AM 8 SEPARATE WORK.

10:36AM 9 I WOULD ALSO NOTE THAT IN ADDITION TO THE MONGE CASE WHICH  
10:36AM 10 IS ABOUT FAIR USE FACTOR 3, THE MONGE CASE ITSELF RELIES ON AN  
10:36AM 11 EARLIER NINTH CIRCUIT CASE COLUMBIA PICTURES TELEVISION V.  
10:36AM 12 KRYPTON BROADCASTING OF BIRMINGHAM, AND THAT CASE WAS A  
10:36AM 13 STATUTORY DAMAGES CASE.

10:36AM 14 MY POINT IS THAT THE NINTH CIRCUIT IS NOT USING A BUNCH OF  
10:36AM 15 DIFFERENT TESTS FOR WHAT IS A SEPARATE WORK, THEY ARE RELYING  
10:36AM 16 ON A SINGLE DEFINITION.

10:36AM 17 AND THERE HAS BEEN NO RESPONSE FROM CISCO OTHER THAN TO  
10:36AM 18 SAY, WELL THE MONGE CASE WAS IRRELEVANT BECAUSE IT'S A FAIR USE  
10:36AM 19 FACTOR 3 CASE.

10:36AM 20 THE COURT: AND SO YOU WOULD JUST SAY THAT ALL OF  
10:36AM 21 THESE COURTS OUTSIDE OF THE NINTH CIRCUIT THAT HAVE RELIED ON  
10:36AM 22 MANUFACTURERS TECH ARE JUST WRONG.

10:36AM 23 MR. KWUN: WELL, YES, BUT I WOULD ALSO SAY THAT MOST  
10:37AM 24 OF THEM ACTUALLY WEREN'T CONFRONTING THIS QUESTION.

10:37AM 25 SO I DO THINK THAT THE MANUFACTURERS TECHNOLOGY COURT,

1 ALTHOUGH THE PRIMARY ISSUE BEFORE IT WAS WHETHER THE SCREEN  
2 DISPLAYS WERE PROTECTED AT ALL, THAT IT WAS ADDRESSING THIS  
3 QUESTION OF WHETHER OR NOT IT WAS A SEPARATE WORK.

4 I THINK IT REACHED A DECISION IT DIDN'T HAVE TO BECAUSE  
5 CERTAINLY THE PLAINTIFF COULD HAVE GONE FORWARD AND PROVED  
6 INFRINGEMENT OR ATTEMPTED TO PROVE INFRINGEMENT BY RELYING ON  
7 THE SIMILARITIES IN THE SCREEN DISPLAYS, EVEN IF THE CODE WAS  
8 NOT COPIED. BUT WITHOUT A DOUBT, THAT COURT ACTUALLY  
9 CONFRONTED THE ISSUE FOR US.

10 BUT THE OTHER CASES --

11 THE COURT: AND NAPOLI DOESN'T CONFRONT IT?

12 MR. KWUN: SO NAPOLI WAS ACTUALLY A REALLY  
13 INTERESTING ONE, BECAUSE ASIDE FROM THE FACT THAT IT WAS  
14 VACATED, THE NAPOLI CASE IS REALLY INTERESTING BECAUSE ACTUALLY  
15 AS I READ IT CLOSELY, ABSOLUTELY SUPPORTS OUR POSITION, AND LET  
16 ME EXPLAIN WHY.

17 SO THE NAPOLI CASE INVOLVED MS. NAPOLI WHO WAS A CONSULTANT  
18 FOR SEARS. AND THEY HIRED HER TO WRITE A PROGRAM. AND  
19 ACCORDING TO SEARS, THEY HAD PROVIDED HER WITH DETAILED  
20 DIAGRAMS OR SOME SUCH FOR THE SCREEN DISPLAYS THEY WANTED.

21 SO THE RELATIONSHIP BETWEEN THE TWO OF THEM SOURED, AND  
22 ULTIMATELY EVEN THOUGH SHE GOT PAID \$10,000, SHE SOMEHOW WAS  
23 ABLE TO SAY, I WANT ALL OF MY SOURCE CODE BACK, AND FOR  
24 WHATEVER REASON, NOTWITHSTANDING THE FACT THEY HAD PAID HER  
25 \$10,000, SEARS GAVE BACK ALL OF THAT CODE.

1 MS. NAPOLI THEN SAID OH, BUT SHE KEPT A COPY, SO THAT'S  
2 COPYRIGHT INFRINGEMENT AND THEY HAD A LAWSUIT.

3 SEARS HAD A DEFENSE, AND SEAR'S DEFENSE IS THEY SAID SEARS  
4 IS A JOINT AUTHOR, AND AS A JOINT AUTHOR, THEY DON'T NEED A  
5 LICENSE. THEY CANNOT INFRINGE. AND THEIR JOINT AUTHORSHIP  
6 DEFENSE WAS BASED ON THE SCREEN DISPLAYS.

7 SO THIS IS THE CONTEXT IN WHICH THE MANUFACTURERS  
8 TECHNOLOGY CASE CAME UP.

9 AND SO SHE SAID, THE PLAINTIFF, THE COPYRIGHT OWNER, SHE  
10 SAID OH, BUT MY COPYRIGHT DOESN'T COVER THE SCREEN DISPLAYS AT  
11 ALL. WELL, SHE LOST ON THAT BECAUSE THE COPYRIGHT OFFICE  
12 CLEARLY SAID IT INCLUDES THE SCREEN DISPLAYS.

13 BUT HOW DOES THIS JOINT AUTHORSHIP ARGUMENT WORK IF THE  
14 SCREEN DISPLAYS ARE A SEPARATE COPYRIGHT FROM THE UNDERLYING  
15 SOURCE CODE? THE FACT THAT SEARS WAS A JOINT AUTHOR OF THE  
16 SCREEN DISPLAYS WOULDN'T GIVE THEM A DEFENSE TO INFRINGEMENT  
17 FOR HAVING THE SOURCE CODE.

18 SO -- AND INDEED, THERE'S A FOOTNOTE, FOOTNOTE 4 IN THE  
19 NAPOLI DECISION, AND THE COURT SAYS, NAPOLI CANNOT SERIOUSLY  
20 DISPUTE THAT WHATEVER WORK SEARS CONTRIBUTED TO WAS TO BE  
21 MERGED WITH NAPOLI'S WORK INTO A SINGLE WHOLE.

22 SO THAT IS WHY THERE WAS A LIVE DISPUTE OVER JOINT  
23 AUTHORSHIP. THE DISTRICT COURT SAID MS. NAPOLI HAS SWORN ON  
24 AFFIDAVIT THAT NOTWITHSTANDING THAT THE SCREEN DISPLAYS IN HER  
25 PROGRAM ARE ESSENTIALLY IDENTICAL TO THE ONES THAT SEARS

1 PROVIDED, THAT THAT WAS A MASSIVE COINCIDENCE AND SHE ACTUALLY,  
2 ON HER OWN, WITHOUT LOOKING AT THEIR MATERIALS, GENERATED  
3 EXACTLY THE SAME SCREEN DISPLAYS.

4 I THINK THE COURT SAID, I CAN'T RESOLVE THAT, THAT'S A  
5 FACTUAL DISPUTE.

6 I THINK THAT YOU CAN READ BETWEEN THE LINES THAT THE COURT  
7 HAD SOME DOUBTS ABOUT MS. NAPOLI'S POSITION WHICH IS PERHAPS  
8 WHY YOU SAW A SETTLEMENT FOUR MONTHS LATER THAT RESULTED IN THE  
9 VACATING OF THE DECISION.

10 BUT I DO THINK THE KEY POINT IS THE ENTIRE DISPUTE OVER  
11 THIS DEFENSE MADE NO SENSE WHATSOEVER UNLESS YOU ASSUME THAT  
12 THE SOURCE CODE AND SCREEN DISPLAYS ARE A SINGLE WORK.

13 SO THE OTHER DECISIONS THAT THEY CITE, THE CLARITY CASE,  
14 THE JAMISON CASE, AND SO ON, THOSE GO TO WHAT IS BEING COPIED  
15 AND WHETHER OR NOT THE THING THAT IS BEING COPIED IS  
16 PROTECTABLE. THEY AREN'T DISCUSSING WHAT THE WORK AS A WHOLE  
17 IS.

18 IF YOU LOOK AT THE CLARITY SOFTWARE CASE, THERE IS A BRIEF  
19 MENTION, IT'S A WESTLAW CITATION THEY HAVE AT PAGE STAR 10, THE  
20 COURT FRAMED THE INFRINGEMENT ISSUE THAT IT WOULD LATER HAVE TO  
21 ADDRESS AS WHETHER OR NOT THE ALLEGED COPYING RENDERED THE  
22 SOFTWARE INFRINGING, NOT THE SCREEN DISPLAYS, THE SOFTWARE.

23 AND THE JAMISON CASE DOES INDEED CITE MANUFACTURERS  
24 TECHNOLOGY, BUT AT STAR 13 IN THAT DECISION HOLDS THAT THE  
25 ALLEGEDLY COPIED MATERIAL, THAT THE ALLEGEDLY COPIED MATERIALS

WERE NOT COPYRIGHTABLE AT ALL BECAUSE THEY WERE A METHOD OF OPERATION, AND THEREFORE IT WAS OF COURSE IRRELEVANT WHAT THE WORK AS A WHOLE IS.

AND WE HAVE GONE OVER THE NAPOLI CASE, I THINK IT ACTUALLY GOES THE OTHER WAY.

THEY ALSO CITED A NUMBER OF CASES IN A STRING CITE IN A FOOTNOTE WHERE THEY I THINK WOULD CONCEDE THAT THIS ISSUE OF WHETHER OR NOT THERE IS A HIDDEN SEPARATE REGISTRATION, THAT THAT WAS NOT DIRECTLY CONFRONTED. BUT THEY SAY THAT THE COURTS PROCEEDED UNDER A SEEMING IMPLICIT UNDERSTANDING THAT THE USER INTERFACE WAS A SEPARATE WORK.

I THINK IF YOU LOOK AT THOSE CASES, FIRST OF ALL, YOU WILL SEE THAT THEY TEND TO BE ANALYTIC DISSECTION ORDERS, MUCH LIKE WE ARE ARGUING ABOUT HERE, BUT THEY ARE GOING TO THE INDIVIDUAL ELEMENTS.

SO THEY ARE ADDRESSING WHETHER OR NOT THE INDIVIDUAL ELEMENTS THAT WERE ALLEGEDLY COPIED ARE PROTECTABLE. AND OF COURSE YOU ARE DOING THAT, OF COURSE YOU ARE GOING TO FOCUS ON WHATEVER WAS ALLEGEDLY COPIED.

THE ONE THING I DO WANT TO BRING UP IS I THINK IT WILL PROBABLY BE SLIDE 28 OR 29, SO THIS IS FROM THE SAME 1988 COPYRIGHT OFFICE DECISION WE HAVE BEEN TALKING ABOUT. THIS IS A PROCEDURAL POINT THAT THEY RAISE. ACTUALLY, LET'S GO TO SLIDE 29.

THE COPYRIGHT OFFICE SAYS THAT THEY RECOGNIZE THAT THIS

10:43AM 1 DECISION TO USE A SINGLE APPLICATION MEANS THAT SOMETIMES YOU  
10:43AM 2 WILL BE REGISTERING THINGS THAT ARE TEXTUAL AND THINGS THAT ARE  
10:43AM 3 VISUAL AT THE SAME TIME.

10:43AM 4 AND THEY SAY, WELL, WHAT YOU OUGHT TO DO IS WE HAVE A  
10:43AM 5 SEPARATE FORM FOR LITERARY WORKS AND ONE FOR PERFORMING ARTS,  
10:43AM 6 FIGURE OUT WHAT PREDOMINATES IN YOUR PROGRAM AND REGISTER IT  
10:43AM 7 THAT WAY.

10:43AM 8 SO LET'S TAKE A LOOK AT THE NEXT SLIDE, THIS IS IN THE  
10:43AM 9 APPLE V. MICROSOFT CASE, THIS IS ONE OF THE DECISIONS THEY CITE  
10:43AM 10 IN THE FOOTNOTE, THIS IS JUDGE VAUGHN'S DISTRICT COURT  
10:43AM 11 DECISION, ACTUALLY ONE OF SEVERAL DISTRICT COURT DECISIONS.

10:43AM 12 THE COURT: YES.

10:43AM 13 MR. KWUN: BUT HE LISTS IN FOOTNOTE 1, THE  
10:43AM 14 REGISTRATIONS THAT ARE AT ISSUE. AND YOU WILL SEE THEY ARE ALL  
10:43AM 15 PA REGISTRATIONS. AND I WILL ADMIT THAT I DON'T DEAL WITH A  
10:43AM 16 LOT OF PERFORMING ARTS CASES, SO I ACTUALLY HAD TO LOOK IT UP.

10:43AM 17 IF WE GO TO THE NEXT SLIDE, THIS IS FROM THE INSTRUCTIONS  
10:43AM 18 FOR FORM PA. AND IT MAKES VERY CLEAR IT'S FOR REGISTRATION OF  
10:43AM 19 WORKS OF THE PERFORMING ARTS, AND THAT INCLUDES WORKS THAT ARE  
10:44AM 20 PERFORMED INDIRECTLY BY MEANS OF ANY DEVICE OR PROCESS.

10:44AM 21 SO WHAT WE HAVE HERE IS WE HAVE THE USER INTERFACE OF THESE  
10:44AM 22 PROGRAMS OF MAC PAINT, MAC DRAW AND OF THE MACINTOSH BINDER,  
10:44AM 23 AND APPLE REGISTERED THEM AS PRIMARILY A WORK OF PERFORMING ART  
10:44AM 24 BECAUSE WHAT THEY WERE MOST INTERESTED IN WAS THE USER  
10:44AM 25 INTERFACE. IT'S VERY DIFFERENT FROM OUR SITUATION WHERE WHAT

1 WAS REGISTERED WAS A TX REGISTRATION. WHAT CISCO WAS PRIMARILY  
2 INTERESTED IN WAS PROTECTING ITS SOURCE CODE.

3 THE COURT: SO I GUESS WHAT I'M REALLY CONCERNED  
4 ABOUT IS THE COPYRIGHT OFFICE TO SAY THAT IF YOU REGISTER YOUR  
5 SOURCE CODE YOU ALSO HAVE A REGISTRATION OF YOUR INTERFACE OR  
6 YOUR SCREEN SHOTS IS, IT'S PROTECTIVE OF THE COPYRIGHT OFFICE  
7 OF NOT BEING INUNDATED WITH TWICE THE NUMBER OF REGISTRATIONS,  
8 SO THAT'S EFFICIENT AND APPROPRIATE.

9 BUT THE COPYRIGHT OFFICE IS ONLY CONCERNED ABOUT  
10 REGISTRATION AND NOT COPYRIGHTABILITY PER SE. THEY ARE NOT  
11 MAKING THAT DETERMINATION.

12 AND SO I DON'T KNOW HOW MUCH TO READ INTO IT, I'M MORE  
13 CONCERNED ABOUT THE INDEPENDENT ECONOMIC VALUE ARGUMENT. BUT  
14 YOU KNOW, IT WOULD BE -- IF AUTHORS HAVE REGISTERED THEIR  
15 SOURCE CODE AND LATER LEARNED THAT THEIR SCREEN SHOTS OR THEIR  
16 USER INTERFACE WAS NOT PROTECTED, THAT WOULD BE SHOCKING.

17 AND SO I THINK TO THE EXTENT THAT WE ARE SEEING ANYTHING IN  
18 THE COPYRIGHT OFFICE BULLETIN, OR I'M NOT SURE WHETHER THIS IS  
19 A DECISION OR AN ANNOUNCEMENT THEY CALL IT, IT IS THAT ONCE YOU  
20 REGISTER YOUR SOURCE CODE, IT ALSO COVERS THE USER INTERFACE AS  
21 THE REGISTERED WORK. I DON'T KNOW THAT THEY MEAN THAT TO BE  
22 THE WORK THAT IS LITIGATED ON A COPYRIGHT INFRINGEMENT WHERE WE  
23 ARE DEALING WITH DIFFERENT ISSUES.

24 I JUST THINK YOUR OTHER ARGUMENT, FRANKLY TO ME, IS THE ONE  
25 I REALLY HAVE TO FOCUS ON THE INDEPENDENT ECONOMIC VALUE.



10:45AM 1 MR. KWUN: AND I DO THINK ON THAT, THE FACT THAT  
10:45AM 2 CISCO HAS PUNTED ENTIRELY AND IT MADE NO ATTEMPT WHATSOEVER TO  
10:46AM 3 COME UP WITH ANY EVIDENCE IS DISPOSITIVE.

10:46AM 4 THE COURT: YEAH. OKAY.

10:46AM 5 MR. PAK, WANT TO HEAR FROM YOU, WE NEED TO TAKE A BREAK AT  
10:46AM 6 11. I WASN'T EXPECTING THIS TO TAKE TWO HOURS, SO I'M KEEPING  
10:46AM 7 AN EYE ON THE TIME. DO YOU THINK YOU CAN FINISH IN 15 MINUTES?

10:46AM 8 MR. PAK: YES, YOUR HONOR.

10:46AM 9 THE COURT: EXCELLENT. THAT WAS THE RIGHT ANSWER.

10:46AM 10 MR. PAK: I THINK I HAVE BEEN ENOUGH TIMES BEFORE  
10:46AM 11 YOUR HONOR TO KNOW WHEN TO BE SHORT.

10:46AM 12 YOUR HONOR, FIRST OF ALL, LET'S DEAL WITH THE LEGAL ISSUES  
10:46AM 13 FIRST.

10:46AM 14 THE COURT: OKAY.

10:46AM 15 MR. PAK: YOUR HONOR, I THINK IT BEHOOVES US TO GO  
10:46AM 16 BACK TO THE MANUFACTURERS TECHNOLOGIES CASE AND READ THAT  
10:46AM 17 OPINION AGAIN. I THINK THAT YOU WILL FIND THAT THE JUDGE IN  
10:46AM 18 THAT CASE DID AN EXTENSIVE SURVEY OF ALL THE DIFFERENT CIRCUIT  
10:46AM 19 HOLDINGS THAT PERTAINED TO THE QUESTION OF USABILITY, TO THE  
10:46AM 20 QUESTION OF COPYRIGHTABILITY OF USER INTERFACES, YOU NOTED  
10:46AM 21 THERE WAS A SPLIT.

10:46AM 22 HE WENT THROUGH AND ANALYZED THE POLICY RATIONAL. OF  
10:47AM 23 COURSE HE CITED THE COPYRIGHT OFFICE DECISION AS PART OF THAT  
10:47AM 24 BECAUSE WHAT HE WAS DOING WAS NOT, AS YOUR HONOR CORRECTLY  
10:47AM 25 NOTED, DEFERRING TO THE COPYRIGHT OFFICE FOR DECISIONS OF

10:47AM 1 ENFORCEMENT AND COPYRIGHTABILITY. WHAT HE WAS SAYING IS  
10:47AM 2 BECAUSE OF THIS NEW POLICY, WHAT ARE THE IMPLICATIONS TO OUR  
10:47AM 3 COPYRIGHT POLICIES AND TO OUR COPYRIGHT LAW IF IT IS THAT YOU  
10:47AM 4 CAN NO LONGER REGISTER THE USER INTERFACE SEPARATELY FROM THE  
10:47AM 5 CODE.

10:47AM 6 AND THERE'S A GREAT DESCRIPTION OF THAT, YOUR HONOR,  
10:47AM 7 STARTING ON PARAGRAPH, OR SECTION 3 OF THAT REPORT, IT SAYS,  
10:47AM 8 THE COURT IS THEREFORE LEFT WITH A CHOICE BETWEEN TWO  
10:47AM 9 ALTERNATIVES. THE COURT NOTES. AND ULTIMATELY SAYS THAT THE  
10:47AM 10 SECOND APPROACH AND ONE THAT THIS COURT ADOPTS, IS TO TREAT THE  
10:47AM 11 SINGLE REGISTRATION OF THE COMPUTER PROGRAM AS ACCOMPLISHING  
10:47AM 12 TWO INTERRELATED YET DISTINCT REGISTRATIONS, DISALLOWS THE  
10:47AM 13 COURT TO BUILD ON THE SOFT PLUM CASE WHICH WAS EXTENSIVELY  
10:47AM 14 DISCUSSED BY FOCUSING ON THE COPYRIGHTABLE EXPRESSION IN EACH  
10:47AM 15 TYPE OF REGISTRATION, AND AVOIDING THE MISTAKE OF IDENTIFYING A  
10:48AM 16 PROGRAM'S IDEA WITH THE IDEA OF A PARTICULAR SCREEN DISPLAY.  
10:48AM 17 AND ALSO RECOGNIZES THAT A COMPUTER PROGRAM AND ITS SCREEN  
10:48AM 18 DISPLAYS ARE FOR COPYRIGHT PURPOSES, FUNDAMENTALLY DISTINCT.

10:48AM 19 THAT LINE OF CASES GOES BACK TO WHELAN, YOUR HONOR, WHELAN,  
10:48AM 20 THAT WAS MORE IN THE SOURCE CODE COPYING CONTEXT. BUT THE  
10:48AM 21 WHELAN COURT NOTED THE VERY POINT THAT YOUR HONOR HAS BEEN  
10:48AM 22 RAISING ALL ALONG WHICH IS, THE ISSUE IS THE OPINION THAT  
10:48AM 23 SCREEN OUTPUTS ARE OF NO PROBATIVE WORTH IN DETERMINING WHETHER  
10:48AM 24 ONE COMPUTER PROGRAM IS COPIED FROM ANOTHER DIFFERENT PROGRAM  
10:48AM 25 CODE BECAUSE DIFFERENT PROGRAMMING LANGUAGES ARE CAPABLE OF

10:48AM 1 PRODUCING THE SAME IDENTICAL SCREEN.

10:48AM 2 SO ALL OF THIS GOES BACK TO THE MANUFACTURERS TECHNOLOGY  
10:48AM 3 OPINION BEING PREDICATED ON LEGAL ANALYSIS OF CASE PRECEDENT.  
10:48AM 4 OF COURSE ACKNOWLEDGING THE IMPLICATIONS OF THE COPYRIGHT  
10:48AM 5 POLICY DECISION, BUT I THINK THIS IS STILL GOOD LAW,  
10:48AM 6 YOUR HONOR. I THINK A NUMBER OF COURTS HAVE CITED IT.

10:48AM 7 ALL THE CASES, CASE FACTUAL ISSUES THAT COUNSEL RAISED --  
10:49AM 8 THE COURT: SO HOW DO I -- THESE ARE TWO COMPLETELY  
10:49AM 9 UNRELATED ISSUES. HOW DO I DEAL WITH THE ISSUE OF INDEPENDENT  
10:49AM 10 VALUE?

10:49AM 11 MR. PAK: YES, LET ME DEAL WITH THAT, YOUR HONOR.

10:49AM 12 SO I THINK THE FIRST QUESTION IS, IS IT POSSIBLE TO HAVE  
10:49AM 13 COPYRIGHT REGISTRATION IN THE INTERFACE, I THINK MANUFACTURERS  
10:49AM 14 TECHNOLOGY IS GOOD LAW, IT SUPPORTS IT.

10:49AM 15 THE NAPOLI CASE SUPPORTS IT, THE FACTUAL DISTINCTIONS THERE  
10:49AM 16 ARE RAISED AS TO WHETHER THE PARTICULAR ALLEGATIONS IN THAT  
10:49AM 17 CASE WHICH INVOLVE JOINT VENTURE AGREEMENTS, WHETHER THE WORK  
10:49AM 18 FOR THE PURPOSE OF THE CONTRACT DISPUTE INCLUDED THE CODE AND  
10:49AM 19 THE USER INTERFACE, THAT'S A SEPARATE ISSUE.

10:49AM 20 BUT THE LAW THAT WE CITED TO YOUR HONOR IS STILL GOOD LAW.  
10:49AM 21 IT IS LAW THAT THE IS RECOGNIZED BY THE COURTS AROUND THIS  
10:49AM 22 COUNTRY THAT SAYS A SINGLE COPYRIGHT REGISTRATION PROVIDES  
10:49AM 23 VALUE, PROVIDES REGISTRATION IN THE USER INTERFACE.

10:49AM 24 THE COURT: WELL, I GUESS ONE THING THAT IT SOMEWHAT  
10:49AM 25 BEGS THE QUESTION OF IF AN AUTHOR CHOOSES TO REGISTER ONLY ITS

10:50AM 1 USER INTERFACE, IS THAT A WORK? IT'S JUST THE REVERSE OF IT.

10:50AM 2 IF YOU REGISTER YOUR SOURCE CODE, THEN YOU GET YOUR USER  
10:50AM 3 INTERFACE WITH IT; AND YOU DON'T HAVE TO MAKE A SEPARATE  
10:50AM 4 REGISTRATION.

10:50AM 5 CAN YOU JUST REGISTER YOUR USER INTERFACE BY ITSELF IF YOU  
10:50AM 6 WANT, AND ACTUALLY, IT SEEMS AS THOUGH IF THE COPYRIGHT OFFICE  
10:50AM 7 IS NOT IN THE POSITION OF DEFINING A WORK IN A LITIGATED CASE,  
10:50AM 8 IT'S JUST NOT WHAT IT -- I DON'T SEE HOW IT COULD.

10:50AM 9 IT COULD DEFINE WHAT IS NECESSARY TO REGISTER SOMETHING,  
10:50AM 10 AND THAT'S ALL IT'S DOING, THEY DON'T TELL US WHAT'S PROTECTED  
10:50AM 11 OR NOT.

10:50AM 12 MR. PAK: IT'S NOT LIKE THE PATENT OFFICE,  
10:50AM 13 YOUR HONOR.

10:50AM 14 THE COURT: SO THEY ARE JUST TAKING IT, STAMPING IT  
10:50AM 15 ON THE DATE IT'S RECEIVED AND THERE IT IS FOR THE WORLD TO SEE.  
10:50AM 16 SO THAT'S WHY I COME AROUND THIS THE OTHER WAY.

10:50AM 17 MR. PAK: YES, SO LET ME ADDRESS THE ECONOMIC VALUE  
10:50AM 18 QUESTION.

10:50AM 19 THE COURT: OKAY.

10:50AM 20 MR. PAK: SO THAT'S REALLY A FACTUAL QUESTION,  
10:51AM 21 YOUR HONOR, AS TO WHETHER IN THIS CASE, CAN CISCO PROVE THAT  
10:51AM 22 THERE IS INDEPENDENT ECONOMIC VALUE TO THE USER INTERFACE  
10:51AM 23 INDEPENDENT OF THE PARTICULAR PROGRAMMING CODE OR PROGRAMMING  
10:51AM 24 LANGUAGE THAT WAS USED TO GENERATE THAT USER INTERFACE.

10:51AM 25 AND WE HAVE, CONTRARY TO THE ASSERTION, WE HAVE AN

10:51AM 1 INCREDIBLE --

10:51AM 2 THE COURT: AND YOU ARE PREPARED TO PROOF UPON IT.

10:51AM 3 MR. PAK: ABSOLUTELY, YOUR HONOR.

10:51AM 4 WE HAVE AN INCREDIBLE AMOUNT OF ECONOMIC EVIDENCE FROM THE

10:51AM 5 EXPERTS, BUT ALSO HISTORICAL EVIDENCE FROM ARISTA'S OWN

10:51AM 6 WITNESSES TO THAT TALK ABOUT THE VERY IMPORTANT ECONOMIC NEED

10:51AM 7 FOR THEM TO COPY THE CISCO CLI, DESPITE THE FACT THAT THEY ARE

10:51AM 8 USING A COMPLETELY DIFFERENT CODE, DESPITE THE FACT THAT THEY

10:51AM 9 ARE USING A COMPLETELY DIFFERENT CODE, DESPITE THE FACT THAT --

10:51AM 10 THE COURT: SO I CAN'T TELL BY THE FACT THAT YOU ARE

10:51AM 11 SUGGESTING, THAT I WOULD LIKE, AND THOUGHT I WAS ABLE TO MAKE A

10:51AM 12 DETERMINATION NOW --

10:51AM 13 MR. PAK: I THINK YOU CAN, YOUR HONOR.

10:51AM 14 THE COURT: -- OF WHAT THE WORK IS.

10:51AM 15 AND IF I WERE TO AGREE WITH YOU, YOU ARE SUGGESTING THAT

10:52AM 16 YOU RECOGNIZE THAT YOU HAVE A BURDEN TO ESTABLISH THIS ECONOMIC

10:52AM 17 VALUE AND YOUR DAMAGES THEORY COULD FAIL PARTIALLY IF YOU DON'T

10:52AM 18 PROVE THAT.

10:52AM 19 MR. PAK: WHAT I'M SAYING, YOUR HONOR, IS THERE'S A

10:52AM 20 SEPARATE QUESTION IN TERMS OF THE WORK.

10:52AM 21 WE THINK THAT THE WORK DEFINITION SCOPE ISSUE WE ARE

10:52AM 22 DEALING WITH NOW CAN BE RESOLVED ON THE MANUFACTURERS

10:52AM 23 TECHNOLOGIES LINE OF CASES.

10:52AM 24 THIS ARGUMENT THAT SOMEHOW AT THE END OF THE DAY THERE MAY

10:52AM 25 BE A FURTHER REQUIREMENT FOR FAIR USE PURPOSES OR OTHER TYPES

1 OF ANALYSIS, WHERE WE HAVE TO LOOK AT THE ECONOMIC VALUE OF THE  
2 WORK, AND DETERMINE WHETHER IT CAN EXIST INDEPENDENTLY OF OTHER  
3 ASPECTS OF THE PROGRAM.

4 THE COURT: YOU ARE SAYING THE ECONOMIC VALUE ONLY  
5 COMES IN, THAT THE MONGE CASE WAS A --

6 MR. PAK: THAT WAS A FAIR USE CASE THAT WAS TALKING  
7 ABOUT -- OF COURSE THE SCOPE HAS TO BE THE SAME, ARE WE TALKING  
8 ABOUT USER INTERFACE OR CODE. BUT IN TERMS OF THE FURTHER  
9 REQUIREMENTS OF ECONOMIC VALUE, LOOKING AT THE IMPACT ON THE  
10 MARKET HARM, THE MARKET HARM OF THAT PARTICULAR COPYRIGHTED  
11 WORK, THAT'S WHERE THE ECONOMIC ANALYSIS COMES IN.

12 BUT REALLY, I GO BACK TO WHAT I SAID TO YOUR HONOR, LET'S  
13 CUT TO THE CHASE HERE, WHICH IS DR. ELSTEN PROVIDES A ROAD MAP  
14 FOR ALL OF THESE QUESTIONS.

15 NUMBER ONE, SHE PUTS A NUMBER, SHE PUT A \$16.4 MILLION  
16 NUMBER ON THE CLI, INDEPENDENT OF ANYTHING ELSE. HER  
17 APPORTIONMENT ANALYSIS ALONE SHOWS THAT THERE'S ECONOMIC VALUE.  
18 WHETHER WE AGREE WITH THAT NUMBER OR IT'S A DIFFERENT NUMBER,  
19 AND THIS IS SLIDE 5 AGAIN.

20 THE COURT: SO LET ME, BECAUSE TIME IS SHORT, LET ME  
21 WALK THROUGH SOME OF THE ARISTA'S ARGUMENTS.

22 MR. PAK: SURE.

23 THE COURT: BECAUSE ASIDE FROM THE LEGAL ISSUES  
24 THERE'S THE DISCLOSURE ISSUE WHICH IS ALWAYS VERY IMPORTANT AND  
25 THEY POINT TO YOUR RESPONSE TO INTERROGATORY NUMBER 6,

1 IDENTIFYING COPYRIGHTED WORK AS THE IOS.

2 AND THEN THEY, I MEAN, ESSENTIALLY THERE ARE NUMEROUS  
3 INTERROGATORY RESPONSES THAT MR. FERRALL WALKED THROUGH THAT  
4 SHOW YOUR IDENTIFICATION.

5 NOW I WASN'T TOO CONCERNED ABOUT THE REGISTERED WORK, I  
6 THINK WE PUT THAT TO REST, OR I HAVE. BUT IN OTHER PLACES YOU  
7 DID IDENTIFY THE WORK AND DEFINE THE WORK I WAS PARTICULARLY  
8 INTERESTED IN THE INTERROGATORY 21. SO 6 AND 21 ARE MY BIGGEST  
9 CONCERNS.

10 MR. PAK: YES, YOUR HONOR.

11 SO FIRST OF ALL, LET'S TALK ABOUT DISCOVERY. IT WOULD TAKE  
12 ME TWO DAYS TO WALK YOU THROUGH, YOUR HONOR, THROUGH ALL OF THE  
13 DISCOVERY RESPONSES IN THIS CASE. DEPOSITION TRANSCRIPTS.

14 THAT'S NOT THE EXERCISE HERE. WE ARE NOT TRYING TO CHERRY  
15 PICK A FEW THINGS THAT WERE IN ONE INTERROGATORY RESPONSE AND  
16 IGNORE THE TOTALITY OF WHAT'S BEEN SAID.

17 LET ME SHOW YOU ON SLIDE 14, YOUR HONOR. BECAUSE FIRST OF  
18 ALL, THE ISSUE IS NOT OPERATING SYSTEM GENERALLY WHETHER WE USE  
19 THE WORD OPERATING SYSTEM. OF COURSE WE USE THE WORD OPERATING  
20 SYSTEM, YOUR HONOR, BECAUSE THAT'S HOW THE REGISTRATIONS WERE  
21 DONE.

22 THE ISSUE IS WHETHER THE COPYRIGHTED WORK AT ISSUE HAS TO  
23 BE JUST THE USER INTERFACE, OR USER INTERFACE PLUS CODE.  
24 BECAUSE WHAT ARISTA WANTS TO DO, YOUR HONOR, IS TO SAY, BECAUSE  
25 COPYRIGHT EXPRESSION DOESN'T PROTECT A FUNCTIONAL SYSTEM, YOU

10:55AM 1 DON'T OWN A COPYRIGHT IN A FUNCTIONAL OPERATING SYSTEM. YOU  
10:55AM 2 OWN COPYRIGHT IN THE EXPRESSION THAT'S EMBODIED IN A PRODUCT.

10:55AM 3 THERE ARE ONLY TWO TYPES OF EXPRESSIONS AT ISSUE HERE, IT  
10:55AM 4 COULD EITHER BE THE USER INTERFACE OR IT COULD BE THE SOURCE  
10:55AM 5 CODE THAT WAS WRITTEN.

10:55AM 6 NOTHING THAT THEY HAVE SHOWN YOU INDICATES WHATSOEVER THAT  
10:55AM 7 WE HAVE COLLECTIVELY DEFINED THE COPYRIGHTED WORK AS CODE PLUS  
10:55AM 8 USER INTERFACE.

10:55AM 9 AND PARTICULARLY ON SLIDE 14, AS YOU SAW IN SOME OF THE  
10:55AM 10 SAME RESPONSES, FOR EXAMPLE NUMBER 21, AND THEN ON ROG NUMBER  
10:55AM 11 ONE WHICH IS THE VERY FIRST INTERROGATORY, THEY ASKED ABOUT IN  
10:55AM 12 TERMS OF OUR COPYRIGHT INFRINGEMENT ALLEGATIONS. WE TALKED  
10:55AM 13 ABOUT THE COPYRIGHTED CLI.

10:55AM 14 SO WE HAVE BEEN VERY CLEAR THAT ALTHOUGH OPERATING SYSTEMS  
10:55AM 15 HAVE BOTH A USER INTERFACE --

10:56AM 16 THE COURT: BUT LET'S LOOK AT, YOU KNOW, I GUESS I'M  
10:56AM 17 KIND OF HUNG UP ON ARISTA'S SLIDE 13 WITH THAT FOOTNOTE OF YOUR  
10:56AM 18 DEFINITION OF CISCO COPYRIGHTED WORKS. AND IT IS DEFINED AS  
10:56AM 19 THE OPERATING SYSTEM.

10:56AM 20 MR. PAK: ABSOLUTELY, YOUR HONOR.

10:56AM 21 AND THAT IS, IF YOU THINK ABOUT WHAT WAS REGISTERED AS THE  
10:56AM 22 COPYRIGHTED WORK, IT IS THE OPERATING SYSTEM.

10:56AM 23 THE COURT: WELL, IN ONE PLACE YOU CALLED IT THE  
10:56AM 24 REGISTERED WORK, I'M GOING TO GIVE YOU A PASS ON THAT, BUT THIS  
10:56AM 25 ONE I'M NOT SURE I CAN.



10:56AM 1 MR. PAK: WELL, TWO THINGS, YOUR HONOR.

10:56AM 2 SO THE COPYRIGHTED WORK, AND YOU CAN SEE IT'S COPYRIGHTED  
10:56AM 3 WORKS, PLURAL, THE COPYRIGHTED WORKS CLEARLY INCLUDES BOTH THE  
10:56AM 4 CODE THAT WAS REGISTERED AS WELL AS THE USER INTERFACE.

10:56AM 5 WHEN THIS TALKS ABOUT COPYRIGHTED OPERATING SYSTEMS AND  
10:56AM 6 DOCUMENTATION --

10:56AM 7 THE COURT: WELL MR. FERRALL IS NOT ARGUING OTHERWISE  
10:56AM 8 HE JUST SAYS IT'S ONE WORD, IT INCLUDES BOTH.

10:56AM 9 MR. PAK: WHEN IT SAYS COPYRIGHTED OPERATING SYSTEM  
10:56AM 10 YOUR HONOR, THIS IS NOT TALKING ABOUT CODE VERSUS USER  
10:57AM 11 INTERFACE, WE HAVE BEEN CLEAR THAT WHEN WE TALK ABOUT THE  
10:57AM 12 OPERATING SYSTEM WITH RESPECT TO THE COPYRIGHTS AT ISSUE IT'S  
10:57AM 13 THE USER INTERFACE COMPONENT OF THAT.

10:57AM 14 THERE'S NOTHING IN THIS STATEMENT YOU ARE SEEING ON PAGE 13  
10:57AM 15 THAT INDICATES THAT WE EVER CONTEMPLATED INCLUDING THE CODE AS  
10:57AM 16 PART OF THE COPYRIGHTED WORK.

10:57AM 17 THIS LANGUAGE, YOUR HONOR, IS ENTIRELY CONSISTENT WITH THE  
10:57AM 18 MANUFACTURERS TECH CASES. WHEN YOU REGISTER A COMPUTER PROGRAM  
10:57AM 19 AND YOU SAY I HAVE COPYRIGHTED THE COMPUTER PROGRAM FILE, I'M  
10:57AM 20 GETTING A SEPARATE DISTINCT REGISTRATIONS, USER INTERFACE AND  
10:57AM 21 CODE.

10:57AM 22 THIS DOESN'T IN ANY WAY NEGATE OR SUGGEST TO YOUR HONOR.  
10:57AM 23 BUT MOST IMPORTANTLY, AGAIN IT GOES BACK TO DR. ELSTEN. SO WE  
10:57AM 24 CAN SIT HERE AND DR. BLACK AS WELL, BUT DR. ELSTEN MAKE ITS  
10:57AM 25 VERY CRYSTAL CLEAR, THIS IS A FAIR USE DISCOVERY RESPONSE

10:57AM 1 YOUR HONOR, CORRECT. THIS IS THE PURPOSE AND CHARACTER OF THE  
10:57AM 2 USE. SHE ANALYZED ALL OF THE DISCOVERY RESPONSES, ALL OF OUR  
10:58AM 3 ALLEGATIONS BEFORE SHE FORMED HER OPINIONS ON FAIR USE.

10:58AM 4 SO IF YOU GO BACK TO SLIDE 5, MS. ELSTEN ANALYZED ALL OF  
10:58AM 5 THESE DISCOVERY RESPONSES IN TOTALITY, NOT JUST THE SNIPPETS  
10:58AM 6 THAT I HAVE SHOWN YOU OR NOT JUST THE SNIPPETS THAT COUNSEL FOR  
10:58AM 7 ARISTA HAS SHOWN YOU. AND THIS IS WHAT SHE SAYS: I UNDERSTAND  
10:58AM 8 THAT THE COPYRIGHTS AT ISSUE DO NOT RELATE TO THE  
10:58AM 9 IMPLEMENTATION OF THE CLI, WHICH IS EXECUTED BY THE UNDERLYING  
10:58AM 10 SOURCE CODE.

10:58AM 11 THIS RIGHT HERE ANSWERS ALL THE QUESTIONS. BECAUSE AGAIN,  
10:58AM 12 WE ARE TALKING ABOUT RULE 26, WE ARE NOT TALKING ABOUT WHETHER  
10:58AM 13 WE COULD, IN ISOLATION, CHERRY PICK THIS WORD OR NOT.

10:58AM 14 THEY KNEW. AND THAT ANSWERS THAT QUESTION

10:58AM 15 THE COURT: SO I THINK I'M SATISFIED THAT YOU HAVE  
10:58AM 16 GIVEN SUFFICIENT DISCLOSURE UNDER RULE 26.

10:58AM 17 THE ISSUE FOR ME IS THE FINAL ISSUE OF WHETHER I'M GOING TO  
10:58AM 18 APPLY OUT-OF-CIRCUIT LAW TO THE DEFINITION OF THE WORK AND  
10:58AM 19 ALLOW, REALLY, THE DISAGREEMENT ON THE SCOPE TO PLAY OUT IN THE  
10:59AM 20 PRESENTATION OF THE CASE ON FAIR USE.

10:59AM 21 AND IT REALLY GETS DOWN TO WHAT IS THE SUBSTANTIAL PORTION  
10:59AM 22 OF THE QUALITATIVE PORTION OF THE PROGRAM.

10:59AM 23 MR. PAK: YES, YOUR HONOR.

10:59AM 24 BUT I DO THINK IT'S IMPORTANT FOR YOUR HONOR TO BE ABLE TO  
10:59AM 25 INSTRUCT THE JURY THAT, LOOK, CISCO IS NOT, CONSISTENT WITH ALL

10:59AM 1 OF THESE DISCOVERY RESPONSES AND OUR COMPLAINT, CISCO IS NOT  
10:59AM 2 GOING TO COME IN HERE AND ASSERT THAT THE CODE IS THE  
10:59AM 3 COPYRIGHTED WORK AT ISSUE.

10:59AM 4 THE COURT: RIGHT.

10:59AM 5 MR. PAK: BECAUSE OTHERWISE THEY HAVE NO IDEA WHAT  
10:59AM 6 TYPE OF COPYING IS INVOLVED, WHAT TYPE OF COPYRIGHTABLE ISSUES  
10:59AM 7 ARE INVOLVED --

10:59AM 8 THE COURT: I PRESUME I CAN INSTRUCT THE JURY UP  
10:59AM 9 FRONT THIS CASE DOESN'T INVOLVE ALLEGATIONS OF COPYING SOURCE  
10:59AM 10 CODE.

10:59AM 11 MR. PAK: THAT'S RIGHT, YOUR HONOR.

10:59AM 12 AND I THINK FOR YOU TO THEN SAY THAT THE COPYRIGHTED WORK  
10:59AM 13 THAT CISCO IS ALLEGING IS THE USER INTERFACE, I THINK THAT  
10:59AM 14 WOULD BE ENTIRELY CONSISTENT WITH THE CASE LAW.

11:00AM 15 THERE'S NOTHING -- EVEN IF YOUR HONOR WANTED TO COUCH IT IN  
11:00AM 16 TERMS OF, THIS IS WHAT CISCO IS ALLEGING AS THE COPYRIGHTED  
11:00AM 17 WORK, IS THE USER INTERFACE --

11:00AM 18 THE COURT: BUT YOU ARE TELLING ME THAT THE -- I  
11:00AM 19 DON'T HAVE TO BE CONCERNED ABOUT NINTH CIRCUIT LAW ON THE  
11:00AM 20 INDEPENDENT ECONOMIC VALUE.

11:00AM 21 MR. PAK: ABSOLUTELY NOT, BECAUSE THERE IS NO  
11:00AM 22 NINTH CIRCUIT LAW THAT NEGATES ALL THE MANUFACTURING TECHNOLOGY  
11:00AM 23 CASES. THIS WASN'T JUST A ONE-DISTRICT CASE, YOUR HONOR, THIS  
11:00AM 24 HAS BEEN CITED BY A NUMBER OF COURTS AROUND THE COUNTRY.

11:00AM 25 AND EVEN IN -- AND I WANTED TO NOTE EVEN IN THE ONE

11:00AM 1 NINTH CIRCUIT CASE THAT COUNSEL FOR ARISTA CITED, THEY WERE  
11:00AM 2 LOOKING AT SCREEN SHOTS IN THE CONTEXT OF THE OVER ALL USER  
11:00AM 3 INTERFACE.

11:00AM 4 THEIR POINT WAS IF I TAKE A FEW SCREEN SHOTS OUT OF THE  
11:00AM 5 TOTALITY OF ALL THE SCREEN SHOTS THAT CAN BE GENERATED USER  
11:00AM 6 INTERFACE, IS THAT A FAIR WAY TO TREAT THE COPYRIGHTABLE WORK  
11:01AM 7 TO SLICE OUT A FEW OF THE SCREENS OUT OF THE MANY SCREENS THAT  
11:01AM 8 COULD BE -- IN THAT DISCUSSION THAT THE NINTH CIRCUIT DOES,  
11:01AM 9 THERE'S NO DISCUSSION OF CODE.

11:01AM 10 AND THAT'S THE ISSUE, YOUR HONOR. THE CODE IS -- WHAT'S  
11:01AM 11 REALLY IMPORTANT IS THEY HAD NEVER CITED TO YOU ANY CASE FROM  
11:01AM 12 THE NINTH CIRCUIT THAT SAYS IT WOULD BE WRONG FOR A DISTRICT  
11:01AM 13 COURT JUDGE IN OUR CIRCUIT TO ALLOW A PLAINTIFF TO ASSERT A  
11:01AM 14 COPYRIGHTED WORK AS THE USER INTERFACE WHEN THEY HAVE --

11:01AM 15 THE COURT: SO HAVE YOU GIVEN ME ANY CASE WHERE USER  
11:01AM 16 INTERFACE WAS AT ISSUE?

11:01AM 17 MR. PAK: THE SYNOPSIS CASE, YOUR HONOR, AND --

11:01AM 18 THE COURT: SYNOPSIS WAS USER INTERFACE?

11:01AM 19 MR. PAK: THAT WAS VERY SIMILAR IN TERMS OF THE  
11:01AM 20 COMMAND LINE INTERFACE TECHNOLOGY.

11:01AM 21 THERE ARE OTHER CASES, I JUST WANT TO ALSO NOTE THAT IF  
11:01AM 22 YOUR HONOR REALLY STOPS TO THINK ABOUT WHAT'S BEING SAID, THINK  
11:01AM 23 ABOUT ALL THE MOVIE CASES THAT WE HAVE AND THE MUSIC CASES IN  
11:01AM 24 THE NINTH CIRCUIT, IT MAKES NO DIFFERENCE WHETHER I ENCODE A  
11:01AM 25 MOVIE USING A DIFFERENT ENCODING SCHEME WHERE THE BITS ARE

11:01AM 1 DIFFERENT. IT DOESN'T MATTER WHETHER I USE FILM OR A VCR TAPE  
11:02AM 2 OR A -- AND THEN IN THE NINTH CIRCUIT THERE ARE A COUPLE OF  
11:02AM 3 OTHER NINTH CIRCUIT CASES YOUR HONOR THAT WE DID NOTE, THIS IS  
11:02AM 4 FOOTNOTE NUMBER ONE, THE APPLE COMPUTER V. MICROSOFT CASE.  
11:02AM 5 THAT'S THE NORTHERN CALIFORNIA 1992 CASE.

11:02AM 6 THE COURT: IS THAT ONE OF THE DISTRICT COURT  
11:02AM 7 DECISIONS?

11:02AM 8 MR. PAK: THAT'S ONE OF THE DISTRICT COURT CASES,  
11:02AM 9 YOUR HONOR.

11:02AM 10 COMPUTER ACCESS TECHNOLOGIES V. CATALYST.

11:02AM 11 THE COURT: AND THESE ARE IN YOUR BRIEF?

11:02AM 12 MR. PAK: THESE ARE IN MY BRIEF, YOUR HONOR.

11:02AM 13 THE COURT: OKAY. WELL, I WILL CERTAINLY HAVE THAT.

11:02AM 14 MR. PAK: SO AGAIN, I THINK WHAT WE ARE ASKING IS WE  
11:02AM 15 ARE SAYING WE SHOULD BE ABLE TO ASSERT WHAT WE HAVE DISCLOSED  
11:02AM 16 IN DISCOVERY. THERE'S BEEN NO NINTH CIRCUIT LAW THAT PRECLUDES  
11:02AM 17 THE ABILITY TO ASSERT COPYRIGHTABLE WORK AS THE USER INTERFACE.

11:02AM 18 THE COURT: WELL, WHEN I CAME IN THIS MORNING I  
11:02AM 19 ACTUALLY THOUGHT YOUR POSITION WAS STRONG AND NOT REMARKABLE,  
11:02AM 20 AS YOU SAY.

11:02AM 21 LET'S TAKE A BREAK. LET'S COME BACK AT A QUARTER PAST AND  
11:02AM 22 THEN WE WILL BE ABLE TO MOVE ON, I HOPE.

11:03AM 23 MR. PAK: THANK YOU, YOUR HONOR.

11:03AM 24 (WHEREUPON A RECESS WAS TAKEN.)

11:18AM 25 THE COURT: ALL RIGHT. IT WOULD BE A PERFECT WORLD

11:18AM 1 IF I HAD, NOW, A COUPLE OF WEEKS TO PREPARE A LENGTHY,  
11:18AM 2 THOUGHTFUL WRITTEN ORDER ON THE DEFINITION OF THE WORKS, AND  
11:18AM 3 THAT PERFECT WORLD ISN'T WHERE WE ARE LIVING TODAY.

11:18AM 4 AND SO I THINK IT'S IMPORTANT THAT I RULE NOW SO THAT YOU  
11:18AM 5 CAN PROCEED TO PREPARING YOUR PRESENTATION FOR TRIAL AND THAT  
11:18AM 6 WE CAN HAVE SOME CLEAR JURY INSTRUCTIONS.

11:18AM 7 AND YOU DID BRIEF THIS QUITE A BIT AGO, I DIDN'T PREPARE A  
11:18AM 8 WRITTEN ORDER IN ADVANCE OF TODAY'S HEARING.

11:18AM 9 ON THE RULE 26 ISSUE, I'M SATISFIED THAT BY THE SECOND  
11:18AM 10 AMENDED COMPLAINT AND THE RESPONSES TO DISCOVERY, THAT CISCO  
11:18AM 11 HAS ADEQUATELY DISCLOSED ITS INTENTION TO PROCEED ON THE  
11:19AM 12 DEFINITION OF ITS WORKS, INCLUDING ITS USER INTERFACE, AND NOT  
11:19AM 13 ITS ENTIRE OPERATING SYSTEM.

11:19AM 14 AND SO ON THAT GROUND, I WILL DENY THE MOTION, OR WHEREVER  
11:19AM 15 WE ARE, THE DEFINITION TO STRIKE THE REQUEST FOR THE DEFINITION  
11:19AM 16 OF USER INTERFACE AS THE OPERATING SYSTEM.

11:19AM 17 ON THE ISSUE OF THE -- THE LEGAL ISSUE THAT MR. KWUN  
11:19AM 18 ARGUED, I THINK IT'S A DIFFICULT ISSUE. I THINK THAT THE CASES  
11:19AM 19 THAT ARE CITED PERTAIN TO SPECIFIC FACTUAL CIRCUMSTANCES AND  
11:19AM 20 DIFFERENT PROCEDURAL POINTS IN THE CASES, BUT I AM PERSUADED  
11:19AM 21 BASED UPON THE MANUFACTURERS TECHNOLOGY CASE, AND THAT LINE OF  
11:19AM 22 CASES THAT HAVE BEEN UTILIZED, I DID LOOK BRIEFLY AT THE APPLE  
11:19AM 23 V. MICROSOFT DECISION, AND OF COURSE IT WASN'T THE HEART OF  
11:19AM 24 THAT DECISION EITHER, BUT IT WAS A CASE THAT WAS BASED ON AN  
11:19AM 25 ANALYSIS OF THE USER INTERFACE THAT, IN FACT, THE REGISTRATION

1 OF THE OPERATING SYSTEM IS CREATING HERE TWO SEPARATE  
2 REGISTRATIONS AND PROTECTABLE WORKS, AND I WILL ALLOW CISCO TO  
3 GO FORWARD ON THE DEFINITION OF ITS WORKS AS EACH OF THE USER  
4 INTERFACES RELATED TO THE PARTICULAR VERSION OF THE OPERATING  
5 SYSTEM AT ISSUE.

6 I DO AGREE WITH MR. KWUN THAT WHEN WE GET TO THE FAIR USE  
7 ARGUMENT IN THE CASE, FOR THAT DEFENSE, THAT WHETHER OR NOT  
8 THERE'S INDEPENDENT ECONOMIC VALUE OF THE USER INTERFACE, MAY  
9 BE AN ISSUE THAT WILL ALLOW YOU TO COMPLETELY WIN AND PREVAIL  
10 ON YOUR FAIR USE DEFENSE. BUT OBVIOUSLY, YOU WOULD HAVE  
11 PREFERRED IT TO BE AN ARGUMENT IN THE YOUR ARSENAL AT THE  
12 EARLIER STAGE OF DETERMINING INFRINGEMENT AND I RECOGNIZE THAT.

13 BUT THE ISSUE IS CERTAINLY ALIVE, AS YOU HAVE SHOWN ME  
14 HERE, AND I THINK THAT WE PERHAPS MOVE THE PRESENTATION OF  
15 EVIDENCE DOWN THE ROAD, BUT IT WILL STILL BE AVAILABLE FOR THE  
16 PROOF ON THE FAIR USE DEFENSE.

17 ALL RIGHT. LET'S MOVE ON THEN. AND I THOUGHT THIS FIRST  
18 PART WOULD TAKE ABOUT 30 MINUTES, SO WE ARE ABOUT  
19 TWO-AND-A-HALF HOURS LATE FROM WHERE I THOUGHT WE WOULD BE.  
20 SO, YOU ARE, I'M SURE, EXQUISITELY ORGANIZED TO LEAD ME THROUGH  
21 THIS, ALTHOUGH I'M NOT SURE HOW IT HAPPENED THAT I TORMENTED  
22 YOU OF BRIEFING THIS ISSUE OF ANALYTIC DISSECTION SO MANY  
23 TIMES, AND GOING BACK THROUGH THE BRIEFING, I REALLY WAS SORRY  
24 YOU HAD DONE THAT SO MANY TIMES, BUT THANK YOU.

25 MR. VAN NEST: DID YOU WANT TO GO TO WHERE YOU

08:21AM

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,	)	CV-14-5344-BLF
	)	
PLAINTIFF,	)	SAN JOSE, CALIFORNIA
	)	
VS.	)	NOVEMBER 28, 2016
	)	
ARISTA NETWORKS, INC.,	)	VOLUME 3
	)	
DEFENDANT	)	PAGES 261-533
	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: DAVID A. NELSON  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER



DIRECT EXAMINATION OF CHRISTINE BAKAN BY MR. NELSON

BY MR. NELSON:

Q. SO FROM CISCO'S PERSPECTIVE, WHY INCLUDE THIS, WHAT'S THE VALUE IN THE CLI?

A. WELL, OUR PRODUCTS ARE THE MOST POPULAR PRODUCTS IN THE INDUSTRY. WE HAVE 80 PERCENT MARKET SHARE IN THE NETWORKING SPACE. AND AS A RESULT WE KNOW THAT OUR PRODUCTS WHICH ARE PRIMARILY MANAGED THROUGH CLI, ARE THE LEADING PRODUCTS OF CHOICE BY OUR CUSTOMERS. SO WE KNOW THAT CLI IS A VERY IMPORTANT ASPECT OF OUR PRODUCTS.

Q. AND HAS THERE EVER BEEN AN ATTEMPT AT CISCO TO DETERMINE THE VALUE OF THE CLI SEPARATE FROM THE PRODUCT ITSELF?

A. NO. IT'S NOT SOMETHING THAT WE'VE THOUGHT ABOUT DOING BECAUSE TO US CLI REPRESENTS ALL THE FUNCTIONALITY THAT'S AVAILABLE IN THE PRODUCTS. IT'S A MECHANISM BY WHICH THE ADMINISTRATORS, THE USERS OF THESE PRODUCTS HAVE DIRECT ACCESS TO BE ABLE TO NOT JUST CONFIGURE, NOT JUST CONTROL, NOT JUST TO TURN SOMETHING ON, BUT TO ACTUALLY TROUBLE SHOOT, MAKE SURE THAT THESE DEVICES THAT ARE RUNNING VERY MISSION-CRITICAL SYSTEMS, ARE WORKING PROPERLY AND WORKING EFFICIENTLY ALL THE TIME. SO CLI IS A VERY CRITICAL ASPECT OF OUR PRODUCT PORTFOLIO. SO WE HAVE NEVER CONDUCTED A SEPARATE SURVEY TO DETERMINE ITS OWN SEPARATE VALUE.

MR. NELSON: I THANK YOU VERY MUCH AND I HAVE NO FURTHER QUESTIONS AT THIS POINT, YOUR HONOR.

THE COURT: THANK YOU.

CROSS-EXAMINATION OF MS. BAKAN BY MR. FERRALL

03:41PM 1 RIGHT?

03:41PM 2 A. YES.

03:41PM 3 Q. AND SO WHAT THIS CISCO PRODUCT OFFERED WAS A SWITCH WITH,  
03:41PM 4 AT MOST, ONE HALF THE NUMBER OF TEN GIGABIT PORTS AS ARISTA HAD  
03:41PM 5 OFFERED TWO YEARS EARLIER IN 2008, RIGHT?

03:41PM 6 A. I DO NOT KNOW WHEN ARISTA'S PRODUCT WAS AVAILABLE WITH THAT  
03:41PM 7 PORT CONFIGURATION, BUT THIS IS CORRECT THIS IS THE PORT  
03:41PM 8 CONFIGURATION OPTION FOR THE 4900 MODULAR SWITCH.

03:41PM 9 THE COURT: MAY I ASK THAT YOU KEEP YOUR VOICE UP. I  
03:41PM 10 KNOW YOUR CHAIR DOESN'T MOVE AND THE MICROPHONE IS A LITTLE FAR  
03:41PM 11 AWAY. YEAH, THAT'S DIFFICULT. I'M SORRY.

03:41PM 12 MR. FERRALL:

03:41PM 13 Q. NOW, YOU ANSWERED SOME QUESTIONS ABOUT THE VALUE OF THE  
03:42PM 14 CLI, I THINK YOU WOULD AGREE THAT CISCO DOESN'T HAVE A SEPARATE  
03:42PM 15 STUDY VALUING ITS COMMAND-LINE INTERFACE?

03:42PM 16 A. SO THE VALUE OF THE CLI AS I MENTIONED EARLIER IS  
03:42PM 17 REPRESENTING ALL THE CAPABILITIES OF THE DEVICES WHETHER IT'S A  
03:42PM 18 SWITCH OR YOU ROUTER. IF YOU ARE ASKING SPECIFICALLY HAVE WE  
03:42PM 19 RUN YOUR STUDIES ON THE MONETARY SPECIFIC VALUE OF THE CLI, NO,  
03:42PM 20 WE HAVE NOT.

03:42PM 21 Q. AND CISCO DOESN'T SELL ITS COMMAND-LINE INTERFACE SEPARATE  
03:42PM 22 FROM THE HARDWARE, RIGHT?

03:42PM 23 A. NO, WE DO NOT. IT'S PART OF THE OPERATING SYSTEM. THAT IS  
03:42PM 24 THE BRAIN OF THE HARDWARE.

03:42PM 25 Q. AND I KNOW IT'S YOUR VIEW THAT EVERYTHING THAT CISCO BUILDS

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:26PM 1 THEN THERE'S THE COMMAND-LINE INTERFACE WHICH IS BASICALLY  
04:26PM 2 TYPING A SENTENCE OF WORDS.

04:26PM 3 Q. SO WHY DID YOU END UP USING THE TEXT-BASED COMMAND-LINE  
04:26PM 4 INTERFACE OVER THESE OTHER POSSIBLE USER INTERFACE DESIGNS?

04:26PM 5 A. SO GUI INTERFACES REQUIRED SOME HARDWARE SUPPORT THAT WE  
04:26PM 6 DIDN'T HAVE AND WE WEREN'T WILLING TO ADD. AND GUIS WERE VERY,  
04:27PM 7 VERY NEW AT THE TIME. THIS WAS 1986, AND GUIS, LIKE I SAID,  
04:27PM 8 WERE VERY NEW TECHNOLOGY THEN.

04:27PM 9 MENU-DRIVEN INTERFACES ARE EXTREMELY SLOW AND CLUNKY AND  
04:27PM 10 ARE NOT VERY EXPRESSIVE. IT'S HARD TO TELL WHAT'S GOING ON  
04:27PM 11 WHEN YOU HAVE A MENU-DRIVEN INTERFACE.

04:27PM 12 Q. NOW, JUST TO BE CLEAR ON THE RECORD, YOU ARE NOT THE FIRST  
04:27PM 13 PERSON IN THE WORLD TO COME UP WITH A PARTICULAR COMMAND-LINE  
04:27PM 14 INTERFACE?

04:27PM 15 A. OH, NO, NO. THAT WAS HOW WE DID THINGS IN THOSE DAYS.

04:27PM 16 Q. RIGHT. AND THE QUESTION IS THEN, WHY DID YOU NOT JUST USE  
04:27PM 17 SOMEBODY ELSE'S EXISTING COMMAND-LINE INTERFACE FOR THE CISCO  
04:27PM 18 PRODUCTS?

04:27PM 19 A. BECAUSE I HAD A NEW PROBLEM. I HAD A NEW TECHNOLOGY.  
04:27PM 20 THERE WERE NOT -- THE AGS WAS ONE OF THE FIRST COMMERCIAL IP  
04:27PM 21 ROUTERS, IT WAS A COMPLETELY NEW TECHNOLOGY. NOBODY KNEW WHAT  
04:27PM 22 AN IP ROUTER WAS. NOBODY WAS SHIPPING ONE. I ACTUALLY HADN'T  
04:27PM 23 SEEN ANYONE OTHER THAN WHAT I WAS CREATING.

04:28PM 24 SO THERE WERE JUST, THERE WERE NEW DEMANDS THAT THE OTHER,  
04:28PM 25 OLDER COMMAND-LINE INTERFACES WOULD JUST NOT SUPPORT.

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:28PM 1 Q. AND WHAT ARE SOME OF THE THINGS YOU DID DIFFERENTLY WITH  
04:28PM 2 YOUR COMMAND-LINE INTERFACE COMPARED TO WHAT EXISTED PRIOR TO  
04:28PM 3 YOUR WORK AT CISCO?

04:28PM 4 A. WELL, I MENTIONED THAT I WANTED TO MAKE IT EXTENSIBLE, AND  
04:28PM 5 ONE WAY THAT I FELT THAT I KNEW HOW TO DO TO MAKE IT EXTENSIBLE  
04:28PM 6 SO I COULD ADD THINGS EASILY WAS TO CREATE HIERARCHIES.

04:28PM 7 Q. OKAY. AND WHEN YOU SAY THE WORD "HIERARCHY," CAN YOU  
04:28PM 8 EXPLAIN TO THE JURY WHAT YOU MEAN BY HIERARCHY?

04:28PM 9 A. SO WE ARE GOING TO HAVE TO UNPACK THIS A LITTLE, OR UNPACK  
04:28PM 10 THIS A LITTLE BIT. I THINK THE BEST PLACE TO START WOULD BE  
04:28PM 11 WITH OTHER DISCUSSIONS OF MODES.

04:28PM 12 Q. SO LET'S DO THAT. WHY DON'T WE LOOK AT SLIDE 12. CAN YOU  
04:28PM 13 EXPLAIN TO US WHAT WE ARE LOOKING AT ON SLIDE 12?

04:28PM 14 A. SO WHAT WE ARE LOOKING AT IS A GRAPHICAL REPRESENTATION OF  
04:28PM 15 WHAT WE CALL THE USER EXEC MODE. IT'S THE TOP LEVEL MODE, IT'S  
04:29PM 16 THE OUTER MOST ONE, IF YOU WILL. AND IT'S IDENTIFIED BY A  
04:29PM 17 PROMPT WHICH IS THE NAME OF THE SYSTEM. IN ONE OF OUR EXAMPLES  
04:29PM 18 IT WILL BE THE WORD SWITCH, BUT CUSTOMERS CAN NAME THIS DEVICE  
04:29PM 19 WHATEVER THEY WANT. AND THEN IT HAS A RIGHT ANGLED BRACKET.

04:29PM 20 Q. LIKE A KARET SIGN?

04:29PM 21 A. A KARET, YES.

04:29PM 22 Q. AND SO WOULD THIS BE THE MODE THAT YOU ENTER AS SOON AS YOU  
04:29PM 23 TURN ON THE ROUTER?

04:29PM 24 A. AS SOON AS YOU TURN ON THE ROUTER AND PRESS THE RETURN KEY  
04:29PM 25 AND YOU WILL GET A PROMPT, THE NAME OF THE DEVICE WITH AN

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:29PM 1

ANGLED BRACKET.

04:29PM 2

Q. WHAT ARE THE TYPES OF COMMANDS YOU COULD USE IN THE USER EXEC MODE?

04:29PM 3

04:29PM 4

A. SAFE COMMANDS. THIS IS SORT OF THE -- THIS IS THE

04:29PM 5

UNPRIVILEGED LEVEL. THE THINGS LIKE SHOW COMMANDS LIKE SHOW

04:29PM 6

INTERFACES. YOU CAN SORT OF SEE WHAT'S GOING ON IN THE SYSTEM

04:29PM 7

BUT YOU CAN'T ACTUALLY AFFECT IT IN ANY SIGNIFICANT WAY.

04:30PM 8

Q. OKAY. LET'S TAKE A LOOK AT THE NEXT SLIDE. WHAT ARE WE LOOKING AT ON THE NEXT VERSION OF SLIDE 12?

04:30PM 9

04:30PM 10

A. THIS IS A REPRESENTATION OF THE MODE UNDERNEATH THE EXEC MODE. THIS IS WHAT WE CALL THE PRIVILEGED EXEC. AND ITS PROMPT IS THE NAME OF THE DEVICE AND A HASH MARK OR A POUND SIGN FOLLOWING.

04:30PM 11

04:30PM 12

04:30PM 13

04:30PM 14

AND THESE ARE COMMANDS THAT ARE MUCH MORE POWERFUL, YOU COULD RELOAD THE SYSTEM, YOU COULD CONFIGURE THE SYSTEM.

04:30PM 15

04:30PM 16

BASICALLY THERE'S SUFFICIENT POWER IN THIS MODE THAT TYPICALLY CUSTOMERS WILL CONFIGURE A PASSWORD THAT HAS TO BE GIVEN BEFORE THEY ENTER INTO THE PRIVILEGED MODE.

04:30PM 17

04:30PM 18

04:30PM 19

Q. HOW WOULD YOU GET TO THE USER EXEC MODE TO THE PRIVILEGED MODE?

04:30PM 20

04:30PM 21

A. I WOULD GIVE THE COMMAND ENABLE, THEN IF THERE'S A PASSWORD, I WOULD HAVE TO TYPE A PASSWORD.

04:30PM 22

04:30PM 23

Q. AND JUST TO MAKE SURE WE HAVE A CLEAR ILLUSTRATION OF THE PROMPTS, WHICH PROMPT ARE WE LOOKING AT ON SLIDE 13 WITH THE KARET SIGN?

04:30PM 24

04:31PM 25

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:31PM 1 A. YOU ARE LOOKING AT THE USER EXEC, THE UNPRIVILEGED LEVEL.

04:31PM 2 Q. THEN IF WE LOOK AT THE NEXT SLIDE, SLIDE 14 WITH THE HASH  
04:31PM 3 SIGN, WHICH PROMPT IS THAT?

04:31PM 4 A. THAT'S THE PRIVILEGED MODE.

04:31PM 5 Q. NOW, DID YOU STOP THERE? DID YOU STOP WITH JUST THE TWO  
04:31PM 6 MODES WE HAVE BEEN DISCUSSING?

04:31PM 7 A. NO. OTHERS HAVE HAD IDEAS OF TWO-LEVEL MODES, NORMAL USER  
04:31PM 8 AND PRIVILEGED MODE. I ADDED A MODE CALLED THE GLOBAL  
04:31PM 9 CONFIGURATION MODE.

04:31PM 10 Q. THAT'S SLIDE 15. CAN YOU EXPLAIN TO THE JURY WHAT IS THE  
04:31PM 11 GLOBAL CONFIGURATION MODE?

04:31PM 12 A. THAT'S THE MODE WHERE WE GIVE COMMANDS THAT ACTUALLY CHANGE  
04:31PM 13 HOW THE DEVICE OPERATES. WE TELL IT ABOUT NETWORK ADDRESSES,  
04:31PM 14 WE TELL IT ABOUT NETWORK PROTOCOLS, WE TURN ON SOFTWARE. WE  
04:31PM 15 TELL IT WHAT IT NEEDS TO KNOW TO ACTUALLY DO ITS JOB.

04:31PM 16 Q. AND HOW DO YOU GET TO THE GLOBAL CONFIGURATION MODE IN YOUR  
04:31PM 17 USER INTERFACE?

04:31PM 18 A. THE COMMAND CONFIGURE TERMINAL.

04:32PM 19 Q. AND WAS THERE ANOTHER MODE THAT YOU CAME UP WITH IN  
04:32PM 20 ADDITION TO THE GLOBAL CONFIGURATION?

04:32PM 21 A. YES. THERE'S A MODE UNDERNEATH THIS CALLED THE USER  
04:32PM 22 INTERFACE CONFIGURATION MODE.

04:32PM 23 Q. OKAY. BEFORE WE DO THAT, JUST TO BE CLEAR ON THE RECORD,  
04:32PM 24 IS THERE A PROMPT THAT'S ASSOCIATED WITH THE CONFIGURATION  
04:32PM 25 MODE?

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:32PM 1 A. YES. IT'S THE NAME OF THE DEVICE, THEN IN PARENTHESIS  
04:32PM 2 CONFIG, THEN A HASH MARK.

04:32PM 3 Q. SO WHEN THE USER SEES THAT THEY KNOW THEY ARE IN THE  
04:32PM 4 CONFIGURATION MODE NOW?

04:32PM 5 A. YES.

04:32PM 6 Q. SO LET'S GO BACK AND LOOK AT SLIDE 17. WHAT IS THIS USER  
04:32PM 7 INTERFACE CONFIGURATION MODE YOU CAME UP WITH?

04:32PM 8 A. THIS IS A MODE WHERE IT'S FOR CONFIGURING PARAMETERS ON  
04:32PM 9 NETWORK INTERFACES WHICH ARE A CRUCIAL PART OF AN IP ROUTER.  
04:32PM 10 IT -- YOU GET TO IT BY TYPING THE WORD "INTERFACE," THEN THE  
04:32PM 11 NAME OF THE INTERFACE. AND THEN THIS MODE HAS MEMORY. THIS  
04:33PM 12 MODE WILL REMEMBER THE NAME OF THAT INTERFACE.

04:33PM 13 AND THEN THE REST OF THOSE, ANY COMMANDS THAT ARE INTERFACE  
04:33PM 14 SPECIFIC COMMANDS WILL THEN APPLY JUST TO THAT PARTICULAR  
04:33PM 15 INTERFACE. AND IF YOU TYPE A COMMAND THAT IS NOT AN  
04:33PM 16 INTERFACE-SPECIFIC COMMAND, IT POPS YOU BACK UP TO THE GLOBAL  
04:33PM 17 CONFIGURATION MODE.

04:33PM 18 Q. WERE YOU AWARE OF OTHER TYPES OF CONFIGURATION MODES LIKE  
04:33PM 19 THIS FOR NETWORKING WHERE IT REMEMBERED WHAT YOU WERE DOING?

04:33PM 20 A. NO. I WAS NOT AWARE OF ANY SUCH.

04:33PM 21 Q. SO GOING BACK TO THE HIERARCHY QUESTION I ASKED YOU, YOU  
04:33PM 22 SAID LET'S TALK ABOUT THE MODES AND PROMPTS, CAN YOU NOW  
04:33PM 23 EXPLAIN TO THE JURY, HOW IS THE CONCEPT OF HIERARCHY REFLECTED  
04:33PM 24 IN THIS SERIES OF MODES THAT WE ARE SEEING HERE?

04:33PM 25 A. WELL, I MEAN, YOU BASICALLY START AT THIS TOP LEVEL, THIS

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:33PM 1 USER EXEC AND THEN AS -- YOU CAN DO SIMPLE THINGS LIKE JUST SEE  
04:33PM 2 WHAT THE STATUS OF THE SYSTEM IS, IF YOU ACTUALLY WANT TO  
04:33PM 3 CHANGE HOW THE SYSTEM OPERATES, THEN YOU GO INTO THE -- YOU  
04:34PM 4 HAVE TO GIVE A PASSWORD TO GET INTO THE PRIVILEGED MODE. YOU  
04:34PM 5 CAN DO A FEW OTHER THINGS IN PRIVILEGED MODE LIKE RESTART THE  
04:34PM 6 SYSTEM AND WHATNOT BUT MOSTLY --

04:34PM 7 Q. HE WAS GETTING EXCITED THERE, MR. LOUGHEED.

04:34PM 8 A. I'M SORRY.

04:34PM 9 YOU CAN DO A FEW OTHER THINGS IN THE PRIVILEGED EXEC, BUT  
04:34PM 10 TYPICALLY PEOPLE GO DOWN INTO THE NEXT LEVEL WHICH IS THE  
04:34PM 11 CONFIGURATION MODE. BECAUSE IF YOU ARE A SYSTEM ADMINISTRATOR,  
04:34PM 12 A NETWORK ADMINISTRATOR, THAT'S WHERE ALL THE ACTION IS.

04:34PM 13 THEN FROM THAT YOU CAN UPON GO INTO THIS INTERFACE  
04:34PM 14 CONFIGURATION MODE, TELL IT WHAT INTERFACE YOU ARE INTERESTED  
04:34PM 15 IN, AND THEN GO AND CONFIGURE THAT. IT'S BASICALLY, IT'S A  
04:34PM 16 HIERARCHY.

04:34PM 17 Q. OKAY. NOW, I UNDERSTAND THERE MAY BE OTHER MODES BUT HOW  
04:34PM 18 WOULD YOU CHARACTERIZE THESE FOUR MODES, THE USER EXEC,  
04:34PM 19 PRIVILEGED EXEC, GLOBAL CONFIGURATION, AND THE INTERFACE MODES?

04:35PM 20 A. THESE ARE THE MAIN MODES OF THE SYSTEM. THESE ARE THE  
04:35PM 21 CRITICAL MODES. THIS IS WHERE YOU SPEND YOUR TIME.

04:35PM 22 Q. OKAY. NOW, I WANT TO GO BACK WITH THIS BACKGROUND TO TALK  
04:35PM 23 ABOUT SOME OF THE WORK THAT YOU DID IN TERMS OF COMING UP WITH  
04:35PM 24 SPECIFIC COMMANDS IN THE CONTEXT OF THESE DIFFERENT MODES AND  
04:35PM 25 PROMPTS.



DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:35PM 1 SO I WANT TO GO BACK TO YOUR DAYS AT STANFORD. SO THIS IS

04:35PM 2 SLIDE 18. CAN YOU EXPLAIN TO THE JURY WHAT WE ARE LOOKING AT

04:35PM 3 ON THIS SLIDE AS IT RELATES TO THE STANFORD USER INTERFACE?

04:35PM 4 A. SO IN THE SOFTWARE THAT I DEVELOPED AT STANFORD, I NEEDED A

04:35PM 5 WAY OF ASSOCIATING AN INTERNET ADDRESS WITH AN INTERFACE. AND

04:35PM 6 I DEVELOPED A, YOU KNOW, A SINGLE WORD COMMAND. IN THIS CASE

04:35PM 7 IT WAS THE WORD "INTERFACE."

04:35PM 8 THEN THE NAME OF THE INTERFACE, THE WORD ADDRESS, AND THEN

04:35PM 9 I WOULD SPECIFY AFTER IT, THAT DOTTED STUFF IS AN IP ADDRESS,

04:36PM 10 AND THEN THE 255 IS, ALL THAT STUFF IS, IT'S SOMETHING CALLED A

04:36PM 11 SUBNET MASS, NOT PARTICULARLY IMPORTANT FOR THIS CASE.

04:36PM 12 THAT'S HOW I SET UP AN IP ADDRESS ON AN INTERFACE.

04:36PM 13 Q. LET ME PAUSE YOU THERE TO BE CLEAR BECAUSE YOU SAID IT WAS

04:36PM 14 A SINGLE WORD COMMAND?

04:36PM 15 A. IT WAS A SINGLE WORD COMMAND.

04:36PM 16 Q. SO WHAT WAS THE COMMAND IN THIS FIRST LINE WE ARE SEEING

04:36PM 17 FROM STANFORD?

04:36PM 18 A. INTERFACE.

04:36PM 19 Q. SO THE REST OF THE TEXT, ETHERNET 0 ADDRESS AND SO ON,

04:36PM 20 WOULD THOSE BE THINGS THE USER PROVIDES AS INPUT?

04:36PM 21 A. YES.

04:36PM 22 Q. OKAY. GREAT. SO THEN YOU HAVE NEXT?

04:36PM 23 A. SO THE NEXT THING I WANTED TO DO WAS TELL THE INTERFACE THE

04:36PM 24 LARGEST SIZED PACKET THAT WAS ALLOWED TO SEND OUT, SOMETHING

04:36PM 25 CALLED AN MTU, MAXIMUM TRANSMISSION UNIT. SO I WOULD HAVE TO

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:36PM 1 TYPE ALL THE PREVIOUS BITS OF THAT COMMAND PLUS THE WORD MTU  
04:36PM 2 AND A NUMBER.

04:37PM 3 AND THIS WAS -- I COULD TELL THAT THIS WASN'T GOING TO WORK  
04:37PM 4 FOR ME VERY MUCH LONGER BECAUSE THERE WERE MORE THINGS I WANTED  
04:37PM 5 TO ADD.

04:37PM 6 Q. OKAY. SO JUST TO BE CLEAR, EVERYTHING ON RED AT THE TOP,  
04:37PM 7 THAT'S WHAT YOU WERE USING AT STANFORD, THAT'S WHAT RAN ON THE  
04:37PM 8 STANFORD CODE?

04:37PM 9 A. YES.

04:37PM 10 Q. AND NOW WE ARE TRANSITIONING TO YOUR DAYS AT CISCO WHERE  
04:37PM 11 YOU ARE WORKING ON THE CISCO INTERFACE?

04:37PM 12 A. RIGHT.

04:37PM 13 Q. SO CAN YOU EXPLAIN TO THE JURY WHAT WE ARE LOOKING AT AT  
04:37PM 14 THE BOTTOM THERE, INTERFACE ETHERNET COMMAND?

04:37PM 15 A. SO THIS WAS THE BEGINNING OF AN INTERFACE MODE. AND THEN  
04:37PM 16 THIS IS, THIS IS BASICALLY THREE COMMANDS. IT'S BETTER  
04:37PM 17 ILLUSTRATED HERE.

04:37PM 18 THERE'S THE WORD INTERFACE, WHICH ENTERS THE MODE, YOU SAY  
04:37PM 19 INTERFACE, THEN THE NAME OF, THE NAME OF THAT INTERFACE. AND  
04:37PM 20 THE SYSTEM REMEMBERS THAT YOU ARE TALKING ABOUT ETHERNET 0.

04:37PM 21 AND THEN THESE SUBSEQUENT COMMANDS, ADDRESS 1.2.3.4 AND  
04:38PM 22 MTU, ARE COMMANDS THAT ARE INTERFACE-SPECIFIC COMMANDS THAT  
04:38PM 23 KNOW THAT WHATEVER PARAMETERS YOU ARE SPECIFYING TO THEM, THEY  
04:38PM 24 BELONG TO, IN THIS CASE, ETHERNET 0.

04:38PM 25 Q. SO DID THE STANFORD INTERFACE HAVE THIS ABILITY TO REMEMBER

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:38PM 1

THINGS?

04:38PM 2

A. NO, IT DID NOT.

04:38PM 3

Q. SO FROM A USER EXPERIENCE PERSPECTIVE, WHAT ARE THE

04:38PM 4

BENEFITS OF HAVING COMMANDS AND MODES THAT ALLOW THE SYSTEM TO

04:38PM 5

REMEMBER WHAT YOU ARE TALKING ABOUT?

04:38PM 6

A. IT SAVED A LOT OF TYPING AND IF YOU DO A LOT OF TYPING YOU

04:38PM 7

GET A LOT OF ERRORS. IT MADE THE USER INTERFACE MORE

04:38PM 8

EXTENSIBLE BECAUSE I COULD ADD NEW COMMANDS WITHOUT INTERFERING

04:38PM 9

WITH THE EXISTING COMMANDS.

04:38PM 10

Q. OKAY. JUST TO BE CLEAR, AT THE BOTTOM THERE IN THE CISCO

04:38PM 11

ADDRESS COMMAND, THERE'S NO WORD IP ANYWHERE IN THAT COMMAND;

04:38PM 12

IS THAT RIGHT?

04:38PM 13

A. WE WERE AN IP ONLY ROUTER AND WE JUST ASSUMED EVERYTHING

04:39PM 14

WAS IP.

04:39PM 15

Q. OKAY. SO ALTHOUGH IT WAS SETTING THE IP ADDRESS, IT DID

04:39PM 16

NOT SAY IP ADDRESS AT THIS TIME?

04:39PM 17

A. CORRECT.

04:39PM 18

Q. SO THEN WE FAST FORWARD A LITTLE BIT IN TIME. WHAT ARE WE

04:39PM 19

LOOKING AT ON THE VERY BOTTOM OF THE CISCO BOX?

04:39PM 20

A. SO WE ARE LOOKING AT THE COMMANDS AS THEY EXIST TODAY. AND

04:39PM 21

WE ARE BASICALLY PREFACING THINGS LIKE, YOU KNOW, ADDRESS

04:39PM 22

BECOMES AN IP ADDRESS, MTU BECOMES AN IP MTU.

04:39PM 23

WHAT WE DISCOVERED WHEN WE WENT INTO THE MARKETPLACE WAS

04:39PM 24

THAT PEOPLE ALREADY HAD WHAT WAS PUT OUT BY OTHER VENDORS WHICH

04:39PM 25

WAS DEC AND XEROX AND THE LIKE. AND THEY WANTED TO RUN TRAFFIC

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:39PM 1 FROM THOSE NETWORKS ACROSS THROUGH OUR ROUTERS.

04:39PM 2 AND SO WE STARTED ADDING THESE OTHER NETWORK PROTOCOLS IN  
04:39PM 3 ADDITION TO IP, IN ADDITION TO THE INTERNET PROTOCOL INTO OUR  
04:40PM 4 SYSTEM. AND THESE OTHER PROTOCOLS HAD CONCEPTS LIKE ADDRESSES  
04:40PM 5 AND MTU AND ROUTING TABLES AND THE LIKE.

04:40PM 6 AND SO WE HAD TO HAVE SOME WAY OF DISTINGUISHING BETWEEN  
04:40PM 7 WHAT SORT OF ADDRESS ARE YOU TALKING ABOUT. AND THE DECISION  
04:40PM 8 THAT WE WENT WITH WAS TO PREFIX A LOT OF THESE COMMANDS WITH  
04:40PM 9 THE PROTOCOL THAT THEY BELONGED TO.

04:40PM 10 SO THERE'S IP ADDRESS HERE, AND YOU HAVE A DEC NET ADDRESS.  
04:40PM 11 XNS ADDRESS. WE BASICALLY, BY THE MIDDLE OF THE '90S, HAD  
04:40PM 12 ENDED UP WITH 14 DIFFERENT NETWORK PROTOCOLS IN THE BOX. WE  
04:40PM 13 HAD GONE FROM BEING JUST AN IP ROUTER TO BECOMING A MULTI  
04:40PM 14 PROTOCOL ROUTER.

04:40PM 15 Q. AND, AGAIN, AT THAT TIME, WHEN YOU WERE WORKING ON THE  
04:40PM 16 FIRST IP ROUTER, WAS THERE ANY KIND OF CONSTRAINT ON YOU OR  
04:40PM 17 FUNCTIONAL DEMAND THAT TOLD YOU, HEY, YOU'VE GOT TO DO IT THIS  
04:40PM 18 WAY?

04:40PM 19 A. THERE WEREN'T ANY OTHER DEVICES LIKE THIS AT THE TIME.  
04:41PM 20 THERE WERE NOT ANY EXPECTATIONS THAT THE CUSTOMERS HAD, THAT  
04:41PM 21 THERE WAS A WAY OF DOING THIS OR THERE WAS A WAY OF TALKING  
04:41PM 22 ABOUT IT OR EVEN THE CHOICE OF WORDS.

04:41PM 23 WE COULD CERTAINLY, YOU KNOW, WE COULD CERTAINLY HAVE  
04:41PM 24 CHOSEN DIFFERENT WORDS TO DO THIS. WE COULD HAVE CHOSEN  
04:41PM 25 DIFFERENT ORDERS OF THESE WORDS TO DO THIS.

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:41PM 1 Q. NOW, LET'S TALK SPECIFICALLY. BY THE WAY, BEFORE WE GO,  
04:41PM 2 SLIDE 22, JUST TO REMIND THE JURY, WHAT IS THE PROMPT FOR THE  
04:41PM 3 CONFIGURATION INTERFACE?

04:41PM 4 A. THE NAME AS IT SHOWS ON THE SLIDE, THE NAME OF THE DEVICE  
04:41PM 5 WHICH IS IN THIS CASE SWITCH, AND THEN IN PARENTHESES CONFIG-IF  
04:41PM 6 HASH MARK. SO YOU WOULD KNOW WHAT MODE YOU WERE IN.

04:41PM 7 Q. SO YOU UNDERSTAND THAT YOU CREATED A LOT OF COMMANDS BUT  
04:41PM 8 SOME OF THE COMMANDS THAT YOU CREATED AT CISCO ARE AT ISSUE IN  
04:41PM 9 THIS CASE, YOU UNDERSTAND THAT?

04:41PM 10 A. YES, I UNDERSTAND THAT.

04:41PM 11 Q. SO I HAVE ON SLIDE 23 FROM YOUR PRESENTATION A NUMBER OF  
04:42PM 12 THESE COMMANDS. CAN YOU JUST CONFIRM FOR THE JURY THAT THESE  
04:42PM 13 ARE, IN FACT, COMMANDS THAT YOU PERSONALLY AUTHORED?

04:42PM 14 A. YES, THESE ARE ONES THAT I PERSONALLY AUTHORED.

04:42PM 15 Q. AND BEFORE YOU CAME UP WITH ANY OF THESE COMMANDS, WERE YOU  
04:42PM 16 AWARE OF ANY ORGANIZATION OR COMPANY THAT HAD USED ANY OF THESE  
04:42PM 17 MULTIWORD COMMANDS BEFORE YOU?

04:42PM 18 A. THERE WAS -- I DIDN'T KNOW OF ANYBODY ELSE THAT USED THESE  
04:42PM 19 AT ALL.

04:42PM 20 Q. AND I WANT TO TALK GENERALLY, AND WE ARE GOING TO GO  
04:42PM 21 THROUGH THIS A LITTLE BIT MORE, THE PROCESS, THE CREATIVITY  
04:42PM 22 PROCESS OR HOW YOU CAME UP WITH THESE COMMANDS.

04:42PM 23 CAN YOU JUST WALK US THROUGH YOUR MENTAL THOUGHT PROCESS IN  
04:42PM 24 TERMS OF HOW YOU CAME UP WITH THESE COMMANDS AND HOW THAT  
04:42PM 25 TRANSLATED ULTIMATELY TO OTHER COMMANDS BY OTHER ENGINEERS AT

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:42PM 1 CISCO.

04:42PM 2 A. OKAY. I CAME UP WITH SOME OF THE FEW INITIAL KEY WORDS  
04:42PM 3 SUCH AS SHOW, FOR STATUS COMMANDS.

04:42PM 4 AND AFTER I CAME UP WITH SORT OF THE INITIAL COMMAND SET,  
04:43PM 5 VERY SMALL SET OF COMMANDS, WHAT I WOULD DO WHEN I HAD NEW  
04:43PM 6 FUNCTIONALITY THAT I WAS CREATING WAS I WOULD LOOK TO SEE WHAT  
04:43PM 7 I HAD DONE BEFORE, AND I NEEDED TO FIT IN WITH THAT. I NEEDED  
04:43PM 8 TO BE SORT OF SOMETHING REASONABLE AND LOGICAL THERE. I DIDN'T  
04:43PM 9 WANT TO HAVE -- IF THERE'S A RHYME AND A REASON TO THINGS,  
04:43PM 10 PEOPLE WILL BE ABLE TO REMEMBER THEM MUCH EASIER.

04:43PM 11 SO I TOOK A LOOK AT WHAT I HAD DONE BEFORE. I BECAME VERY  
04:43PM 12 AWARE THAT I WAS GOING TO BE -- THIS WAS GOING TO CONTINUE TO  
04:43PM 13 EVOLVE. SO I WAS SORT OF TAKING MY BEST GUESS OF THE FUTURE AS  
04:43PM 14 TO WHAT MIGHT FURTHER DEVELOP, AND I DIDN'T WANT TO CLOSE OFF  
04:43PM 15 ANY AVENUES BY POOR CHOICE OF WORDS, OR THE LIKE.

04:43PM 16 I ALSO NEEDED TO COMMUNICATE TO NETWORK MANAGERS AND  
04:43PM 17 SUPPORT PEOPLE SOME IDEAS. I MEAN, WHAT SORT OF MAKES SENSE TO  
04:44PM 18 THAT AUDIENCE.

04:44PM 19 AND THEN THERE WAS MY OWN IDIOSYNCRATIC THINGS. CERTAIN  
04:44PM 20 WORDS THAT APPEALED TO ME, CERTAIN WORDS THAT WERE SHORTER OR  
04:44PM 21 LONGER. I LIKE WORDS THAT ARE SPELLED OUT. I DIDN'T PUT -- I  
04:44PM 22 DON'T LIKE DOTS IN THE MIDDLE OF THINGS. I LIKE HYPHENS AND  
04:44PM 23 NOT UNDERSCORES, JUST LITTLE IDIOSYNCRATIC THINGS LIKE THAT.

04:44PM 24 AND THAT'S THE THOUGHT PROCESS THEY WENT THROUGH WHEN I WAS  
04:44PM 25 CREATING COMMANDS IN THE EARLY DAYS.

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:44PM 1 AND AS WE HIRED ENGINEERS, I BASICALLY TAUGHT THEM THIS,  
04:44PM 2 THIS IS HOW YOU THINK ABOUT IT, THIS IS HOW YOU DO IT. AND  
04:44PM 3 THEY WOULD DEVELOP THEIR OWN COMMANDS. WE MIGHT TALK ABOUT  
04:44PM 4 THOSE COMMANDS. BUT EVENTUALLY -- ESSENTIALLY THEY HAD A GREAT  
04:44PM 5 DEAL OF FREEDOM AS TO WHAT THEY WERE GOING TO CHOOSE. AND  
04:44PM 6 THAT'S BEEN BASICALLY THE PROCESS EVER SINCE.

04:44PM 7 Q. OKAY. AND I'M SURE -- ARE THERE COMMANDS HERE THAT YOU  
04:45PM 8 LOOK BACK AND YOU COULD SAY, I PROBABLY WOULD HAVE COME UP WITH  
04:45PM 9 A DIFFERENT COMMAND KNOWING THAT I KNOW NOW?

04:45PM 10 A. UM, YES. NO, THERE'S -- YOU CAN ALWAYS -- ONCE YOU  
04:45PM 11 UNDERSTAND THE PROBLEM MORE CLEARLY FROM A DIFFERENT  
04:45PM 12 PERSPECTIVE, YOU CAN USUALLY COME UP WITH DIFFERENT WAYS OF  
04:45PM 13 DOING THINGS.

04:45PM 14 Q. OF THESE COMMANDS HERE, I DON'T HAVE THE TIME TO GO THROUGH  
04:45PM 15 ALL OF THEM, BUT COULD YOU JUST HIGHLIGHT FOR THE JURY SOME OF  
04:45PM 16 THE COMMANDS THAT YOU PERSONALLY AUTHORED THAT ARE WIDELY  
04:45PM 17 UTILIZED EVEN TODAY BY CISCO ENGINEERS?

04:45PM 18 A. SO THERE IS -- WELL, IP ADDRESS THAT WE'VE TALKED ABOUT,  
04:45PM 19 WHICH ASSIGNS AN IP ADDRESS TO AN INTERFACE.

04:45PM 20 IP ACCESS LIST SETS UP A BUNCH OF RULES AS TO WHAT PACKETS  
04:45PM 21 CAN GO OUT TO PARTICULAR INTERFACES. YOU CAN BUILD A REAL  
04:45PM 22 SIMPLE THING CALLED A FIREWALL TO MAKE SURE THE WRONG PACKETS  
04:45PM 23 DON'T GET IN OUR OUT OF A NETWORK.

04:45PM 24 AND SHOW INTERFACE IS ONE THAT'S USED EVERY DAY BY NETWORK  
04:46PM 25 MANAGERS TO SEE WHAT'S GOING ON IN THE NETWORK.

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:46PM 1 Q. AND SO WE WILL TALK ABOUT HIERARCHY A LITTLE BIT FURTHER.

04:46PM 2 BUT JUST IN THINKING ABOUT THE WORD CHOICES, MR. LOUGHEED,

04:46PM 3 LET'S TAKE IP, FOR EXAMPLE. WHAT ARE SOME OF THE WORDS YOU

04:46PM 4 COULD HAVE USED AND YOU HAD CONSIDERED INSTEAD OF JUST USING

04:46PM 5 THE LETTERS IP?

04:46PM 6 A. WELL, I COULD HAVE USED INTERNET. THAT WOULD HAVE BEEN A

04:46PM 7 PERFECTLY REASONABLE CHOICE. I COULD HAVE USED IP V4, WHICH IS

04:46PM 8 -- THIS IP IS ACTUALLY THE FOURTH VERSION OF IP. I COULD HAVE

04:46PM 9 USED THE WORD TCP-IP, JUST ALL RUN TOGETHER. I COULD HAVE USED

04:46PM 10 INTERNET-PROTOCOL. THERE'S A NUMBER OF POSSIBILITIES.

04:46PM 11 Q. LET'S TAKE ADDRESS, FOR EXAMPLE. THAT'S ANOTHER WORD

04:46PM 12 THAT'S COMMONLY USED TODAY, BUT AT THE TIME YOU WERE COMING UP

04:47PM 13 WITH THIS COMMAND, WHAT WERE SOME OTHER WORDS YOU COULD HAVE

04:47PM 14 CHOSEN?

04:47PM 15 A. I COULD HAVE CHOSEN LABEL.

04:47PM 16 MR. SILBERT: OBJECT TO COULD HAVE CHOSEN.

04:47PM 17 MR. PAK: LET ME REPHRASE IT.

04:47PM 18 Q. WHAT WERE SOME OF THE WORDS YOU DID CONSIDER AT THE TIME?

04:47PM 19 A. IDENTIFIER.

04:47PM 20 Q. ANY OTHERS THAT YOU CAN THINK OF?

04:47PM 21 A. I THINK WE CONSIDERED THE LABEL.

04:47PM 22 Q. AND AT THE TIME, JUST TO REMIND US AGAIN, WAS THERE ANY

04:47PM 23 FUNCTIONALITY RESTRICTION ON WHAT WORDS YOU HAVE TO CHOOSE FROM

04:47PM 24 A COMMAND PERSPECTIVE AT THE TIME?

04:47PM 25 A. NO, AT THIS TIME THERE WERE NOT EXISTING CUSTOMERS. THERE



DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:47PM 1 WAS NO EXPECTATION OF WHAT SORT OF USER INTERFACE OR WHAT  
04:47PM 2 CHOICE OF WORDS PEOPLE WOULD USE.

04:48PM 3 Q. AND LET'S TAKE ANOTHER ONE LAST EXAMPLE. ACCESS LIST,  
04:48PM 4 THAT'S ACCESS-LIST. WHAT WERE SOME OF THE OTHER OPTIONS THAT  
04:48PM 5 YOU CONSIDERED INSTEAD OF ACCESS LIST AT THE TIME?

04:48PM 6 A. IP RULES WAS, BECAUSE THAT'S WHAT BASICALLY AN ACCESS LIST  
04:48PM 7 IS, IS A LIST OF RULES OF WHERE PACKETS GO.

04:48PM 8 Q. CAN YOU THINK OF ANY OTHERS THAT YOU DID CONSIDER AT THE  
04:48PM 9 TIME FOR ACCESS LIST?

04:48PM 10 A. PERMIT LIST.

04:48PM 11 Q. AND, AGAIN, WERE THERE ANY RESTRICTIONS AT THE TIME ON THE  
04:48PM 12 SPECIFIC WORDS YOU CHOSE OR THE ACRONYMS YOU CHOSE?

04:48PM 13 A. NO.

04:48PM 14 Q. NOW, I WANT TO GO BACK TO A COMMAND HIERARCHY, SO YOU  
04:48PM 15 TALKED ABOUT HIERARCHY IN THE CONTEXT OF MODES, DO YOU RECALL  
04:48PM 16 THAT CONVERSATION?

04:48PM 17 A. YES.

04:48PM 18 Q. NOW, I WOULD LIKE TO HAVE YOU WALK THE JURY THROUGH THE  
04:48PM 19 CONCEPT OF HIERARCHY AS IT PERTAINS TO MULTIWORD COMMANDS.

04:48PM 20 SO AT A VERY HIGH LEVEL, CAN YOU EXPLAIN WHAT A COMMAND  
04:48PM 21 HIERARCHY IS?

04:49PM 22 A. IT'S A SET OF COMMANDS THAT SHARE SOME INITIAL WORDS IN  
04:49PM 23 THE -- SET OF MULTIWORD COMMANDS THAT SHARE INITIAL WORDS.

04:49PM 24 Q. OKAY. SO IT'S -- LOOK AT AN EXAMPLE OF THAT, SLIDE 24 FROM  
04:49PM 25 YOUR PRESENTATION. CAN YOU SHOW US WHAT YOU ARE DEPICTING WITH

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:49PM 1 THIS PICTURE ON SLIDE 24?

04:49PM 2 A. THIS IS THE "SHOW HIERARCHY," AND YOU CAN TYPE THE WORD  
04:49PM 3 SHOW, AND WE'VE ALREADY SEEN INTERFACES IS ONE OF THE THINGS  
04:49PM 4 THAT YOU CAN FOLLOW THE WORD SHOW WITH. THERE'S ALSO SHOW IP,  
04:49PM 5 THERE'S SHOW SPANNING-TREE, THERE'S SHOW ARP, SHOW HOSTS.  
04:49PM 6 THAT'S SORT OF THE SECOND LEVEL OF THE HIERARCHY OF THE "SHOW  
04:49PM 7 HIERARCHY."

04:49PM 8 THERE'S A THIRD LEVEL UNDER IP WHERE I CAN SAY SHOW IP,  
04:49PM 9 BGP, ACCESS LISTS, INTERFACE, ARP, ROUTE.

04:50PM 10 Q. AND WHY DID YOU DECIDE TO IMPOSE OR USE A HIERARCHY AS YOU  
04:50PM 11 WERE COMING UP WITH THESE MULTIWORD COMMANDS AT CISCO?

04:50PM 12 A. BASICALLY EASE OF USE BY HUMAN BEINGS. I COULD ADD THINGS  
04:50PM 13 IN HERE, I COULD ADD NEW FUNCTIONALITY IN BASICALLY BY HOOKING  
04:50PM 14 IT IN IN THE RIGHT LEVEL IN THIS HIERARCHY.

04:50PM 15 ALSO IF A NETWORK ADMINISTRATOR KNEW SOME INITIAL WORDS OR  
04:50PM 16 HAD SORT OF AN IDEA OF WHAT MIGHT BE THE LEADING WORDS, YOU  
04:50PM 17 COULD ACTUALLY START EXPLORING THE HIERARCHY.

04:50PM 18 Q. OKAY. AND JUST GOING BACK TO YOUR DAYS AT STANFORD, DOES  
04:50PM 19 STANFORD USE THE INTERFACE THAT YOU WORKED ON BEFORE YOU LEFT  
04:50PM 20 FOR CISCO? DID IT HAVE THIS KIND OF HIERARCHICAL STRUCTURE?

04:50PM 21 A. THE SOFTWARE THAT I STARTED WITH HAD BASICALLY ALL THE  
04:51PM 22 COMMANDS AT THE SAME LEVEL. I DIDN'T THINK THAT WAS VERY  
04:51PM 23 EXTENSIBLE, SO I STARTED -- ACTUALLY SHOW, I THINK, WAS ONE OF  
04:51PM 24 THE VERY FIRST HIERARCHIES THAT I CREATED.

04:51PM 25 Q. SO JUST TO BE CLEAR ON THE RECORD, AT STANFORD YOU DID NOT

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:51PM 1 HAVE THIS MULTIWORD COMMAND HIERARCHY STRUCTURE?

04:51PM 2 A. THE ORIGINAL STANFORD SOFTWARE DID NOT HAVE THE WORD SHOW.

04:51PM 3 Q. LET'S LOOK AT ONE MORE HIERARCHY.

04:51PM 4 CAN YOU EXPLAIN TO THE JURY WHAT WE ARE LOOKING AT ON SLIDE  
04:51PM 5 25 OF YOUR PRESENTATION?

04:51PM 6 A. WE ARE LOOKING AT AN IP HIERARCHY WITHIN THE CONFIGURATION  
04:51PM 7 MODE, THE GLOBAL CONFIGURATION MODE AS WELL AS THE INTERFACE  
04:51PM 8 CONFIGURATION MODE.

04:51PM 9 THESE ARE ALL THE -- THE FIRST LEVEL IS A LIST OF VERY  
04:51PM 10 COMMON COMMANDS THAT YOU CAN GIVE WHILE YOU ARE CONFIGURING THE  
04:51PM 11 SYSTEM. THE WORD "DOMAIN" ACTUALLY CONTINUES ONTO A THIRD  
04:51PM 12 LEVEL, WHERE YOU CAN SAY IP DOMAIN LOOKUP.

04:52PM 13 Q. AND THEN I NOTICE SOMETHING HERE, SO THIS ONE HAS IP, AND  
04:52PM 14 IT'S GOT ALL OF THESE ENTRIES UNDER THE IP HIERARCHY. BUT THEN  
04:52PM 15 WHEN I GO BACK TO YOUR EARLIER SLIDE FOR THE "SHOW HIERARCHY"  
04:52PM 16 YOU ALSO HAVE SHOW IP.

04:52PM 17 A. YES.

04:52PM 18 Q. WHY DID YOU END UP PUTTING IP IN TWO SEPARATE HIERARCHIES?  
04:52PM 19 HOW DID THAT DECISION COME ABOUT?

04:52PM 20 A. BECAUSE WE WERE BASICALLY -- WE HAD BECOME A MULTI PROTOCOL  
04:52PM 21 ROUTER, AND WE FIRST RAN INTO THE ISSUE OF HOW TO DISTINGUISH  
04:52PM 22 BETWEEN PROTOCOLS IN THE CONFIGURATION MODES AND WE SOLVED THAT  
04:52PM 23 BY PREFACING THE THINGS WITH IP.

04:52PM 24 AND THEN IN THE INTEREST OF JUST SYMMETRY, SO THAT THE  
04:52PM 25 CUSTOMERS WOULD SEE SORT OF THE SAME PATTERNS REFLECTED AGAIN,

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:52PM 1 WE CREATED AN IP HIERARCHY IN THE SHOW COMMANDS.

04:52PM 2 Q. NOW, IS THERE ANY REASON WHY YOU COULDN'T HAVE DECIDED TO  
04:53PM 3 PUT IP AS ONE OF THE ENTRIES THERE?

04:53PM 4 A. THAT WOULD HAVE BEEN PERFECTLY REASONABLE. THAT WOULD BE  
04:53PM 5 ONE WAY OF DOING THINGS.

04:53PM 6 Q. AND YOU JUST MADE A DIFFERENT HIERARCHY CHOICE?

04:53PM 7 A. I MADE THIS PARTICULAR HIERARCHICAL CHOICE. THERE WAS  
04:53PM 8 NOTHING SACRED ABOUT THIS PARTICULAR ORDERING OF COMMANDS OR  
04:53PM 9 PARTICULAR ORGANIZING PRINCIPAL. I COULD HAVE ORGANIZED THINGS  
04:53PM 10 ENTIRELY BY TECHNOLOGY AREA OR --

04:53PM 11 Q. WHAT DO YOU MEAN BY TECHNOLOGY AREA?

04:53PM 12 A. SO I COULD HAVE HAD A TOP LEVEL SHOW COMMAND -- EXCUSE ME.  
04:53PM 13 I COULD HAVE HAD A TOP LEVEL COMMAND CALLED IP, FOR INSTANCE.

04:53PM 14 AND I COULD HAVE BASICALLY SAID THERE'S IP AND THEN THERE  
04:53PM 15 WOULD BE A COMMAND THAT MIGHT INVOKE SORT OF A CONFIGURATION  
04:53PM 16 ACTION OR I COULD HAVE IP AND A BUNCH OF -- A FEW MORE WORDS,  
04:54PM 17 THEN I COULD HAVE AT THE END DISPLAY OR SOMETHING LIKE THAT. I  
04:54PM 18 COULD HAVE DONE STUFF LIKE THAT AS WELL. THERE'S NO INHERENT  
04:54PM 19 REASON WHY THAT COULDN'T HAVE BEEN DONE.

04:54PM 20 MR. SILBERT: YOUR HONOR, OBJECTION TO TESTIMONY  
04:54PM 21 ABOUT WHAT COULD HAVE BEEN DONE.

04:54PM 22 THE COURT: OVERRULED.

04:54PM 23 BY MR. PAK:

04:54PM 24 Q. AND, MR. LOUGHEED, JUST TO MAKE IT ABSOLUTELY CLEAR ON THE  
04:54PM 25 RECORD, DID YOU COPY ANY OF YOUR MULTIWORD COMMANDS OR THE

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:54PM 1 HIERARCHIES FROM ANY OTHER SOURCE?

04:54PM 2 A. NO.

04:54PM 3 Q. I'M GOING TO MOVE ON TO TALK ABOUT COMMAND OUTPUTS. THAT'S  
04:54PM 4 SOMETHING ELSE WE HEARD IN THIS CASE.

04:54PM 5 SO WE LOOKED AT HOW COMMANDS GET ENTERED, FOR EXAMPLE, SHOW  
04:54PM 6 INTERFACES. WE BRIEFLY HAD YOU INTRODUCE THE IDEA OF HAVING  
04:54PM 7 SOME SCREEN OUTPUTS THAT WERE SHOWN UP ON THE SCREEN. DO YOU  
04:54PM 8 SEE THAT, SIR?

04:54PM 9 I WANT TO SPEND A FEW MINUTES HERE WITH THE JURY. THERE'S  
04:55PM 10 JUST A LOT OF WORDS, SO CAN YOU HELP US JUST INTERPRET THAT.

04:55PM 11 SO CAN YOU INTERPRET FOR THE JURY WHAT YOU ARE SEEING HERE  
04:55PM 12 WITH THESE WORDS AND HOW THAT'S ORGANIZED?

04:55PM 13 A. SO THIS COMMAND IS USED BY NETWORK ADMINISTRATORS TO SEE  
04:55PM 14 WHAT THE STATUS IS OF A NETWORK INTERFACE. THIS IS A CRUCIAL  
04:55PM 15 COMMAND FOR TROUBLE SHOOTING PROBLEMS.

04:55PM 16 AND IT'S ORGANIZED IN A FIXED WAY WITH THE MOST IMPORTANT  
04:55PM 17 INFORMATION UP AT THE TOP. IT TELLS YOU WHAT THE NAME OF THE  
04:55PM 18 INTERFACE IS. IN THIS CASE ETHERNET 0.

04:55PM 19 IT TELLS YOU WHETHER THE SYSTEM THINKS IT'S UP OR DOWN. IT  
04:55PM 20 TELLS YOU ABOUT SOMETHING CALLED HARDWARE ADDRESSES. IT TELLS  
04:55PM 21 YOU WHAT THE INTERNET ADDRESS IS. IT TELLS YOU SOME, YOU KNOW,  
04:55PM 22 PARAMETERS THAT ARE GOOD FOR, LIKE, MTU AND BANDWIDTH AND DELAY  
04:55PM 23 AND THE LIKE THAT ARE USEFUL IN CERTAIN CONTEXTS, WHAT SORT OF  
04:56PM 24 PACKETS IT SENDS.

04:56PM 25 THE TIME SINCE THE LAST INPUT OR THE LAST OUTPUT. IF YOU

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:56PM 1 THINK THAT INTERFACE SHOULD BE ACTIVE AND IT'S BEEN SENDING  
04:56PM 2 TRAFFIC AND IT HASN'T SENT ANYTHING FOR AN HOUR, YOU GOT A  
04:56PM 3 PROBLEM.

04:56PM 4 IT GIVES YOU INFORMATION ABOUT OUTPUT AND INPUT CUES. IF  
04:56PM 5 ONE OF THOSE CUES IS ABSOLUTELY FULL, THERE'S PROBABLY  
04:56PM 6 SOMETHING BADLY WRONG WITH THE SYSTEM AND NOTHING IS HAPPENING.  
04:56PM 7 IT TELLS YOU ABOUT THE RATE OF INPUT AND OUTPUT AND BYTES AND  
04:56PM 8 PACKET PER SECOND WHICH GIVES YOU A CLUE AS TO WHAT SORT OF  
04:56PM 9 TRAFFIC PATTERNS YOU ARE SEEING THERE.

04:56PM 10 THEN THE SUMS OF THINGS LIKE THE NUMBER OF PACKETS AND  
04:56PM 11 BYTES INPUT, OUTPUT, HAVE YOU RECEIVED ERROR PACKET, HAVE YOU  
04:56PM 12 DROPPED THINGS BECAUSE YOU HAVE RUN OUT OF BUFFERS FOR THESE  
04:56PM 13 PACKETS TO RUN INTO.

04:56PM 14 THAT'S WHAT THIS DOES. AND BECAUSE IT'S A TEXTUAL OUTPUT,  
04:57PM 15 BECAUSE IT'S A BUNCH OF WORDS, PEOPLE CAN SCAN THAT REAL  
04:57PM 16 QUICKLY LIKE YOU SCAN THE FRONT PAGE OF A NEWSPAPER AND YOU CAN  
04:57PM 17 SEE WHAT THE MOST IMPORTANT THING IS, IT CATCHES YOUR EYE.

04:57PM 18 Q. JUST TO BE CLEAR, WAS THERE ANY KIND OF CONSTRAINT,  
04:57PM 19 RESTRICTIONS OR SOMETHING THAT SAID YOU HAD TO USE THIS  
04:57PM 20 PARTICULAR SEQUENCE OF WORDS AS ANY OF YOUR SCREEN OUTPUTS?

04:57PM 21 A. NO, THERE WAS NO CONSTRAINT, THIS WAS JUST -- I WROTE THE  
04:57PM 22 ORIGINAL FORM OF THIS COMMAND, AND I WAS USING IT FOR MYSELF  
04:57PM 23 JUST TO FIGURE OUT WHAT WAS GOING ON IN THE NETWORK. THIS IS  
04:57PM 24 THE STUFF THAT I THOUGHT WAS THE MOST IMPORTANT.

04:57PM 25 THERE HAVE BEEN OTHER ENGINEERS THAT HAVE COME ALONG AND

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:57PM 1 ADDED SOME FUNCTIONALITY OVER THE YEARS, BUT THERE'S NO  
04:57PM 2 CONSTRAINT.

04:57PM 3 Q. AND GENERALLY SPEAKING, WHO AUTHORS SCREEN OUTPUTS AT  
04:57PM 4 CISCO?

04:57PM 5 A. THE ENGINEERS THAT WRITE THE FUNCTIONALITY THAT RELATES TO  
04:57PM 6 THAT SCREEN OUTPUT.

04:58PM 7 MR. PAK: AND, YOUR HONOR, I PROBABLY HAVE ABOUT TEN  
04:58PM 8 MORE MINUTES. SO WOULD YOU LIKE TO TAKE --

04:58PM 9 THE COURT: WE ARE NOT GOING TO GO UNTIL TEN PAST  
04:58PM 10 5:00. WE ALWAYS STOP PROMPTLY AT 5:00. SO THANK YOU FOR  
04:58PM 11 ASKING.

04:58PM 12 MR. PAK: SO LET ME GUEST A FEW MORE QUESTIONS TO GET  
04:58PM 13 THE --

04:58PM 14 THE COURT: OKAY. SURE.

04:58PM 15 BY MR. PAK:

04:58PM 16 Q. WITH RESPECT TO THE HELP DESCRIPTIONS, DO YOU RECALL THAT  
04:58PM 17 AS BEING ANOTHER ELEMENT OF YOUR USER INTERFACE, JUST TO REMIND  
04:58PM 18 THE JURY, WE HAVE OF -- WHAT DO WE SEE HERE ON SLIDE 28?

04:58PM 19 A. YOU ARE SEEING SOMEBODY IS TYPING THE COMMAND SHOW AND THEN  
04:58PM 20 THE QUESTION MARK.

04:58PM 21 Q. OKAY. AND THEN LET'S GO TO THE NEXT SLIDE. WHAT ARE WE  
04:58PM 22 LOOKING AT HERE?

04:58PM 23 A. THIS IS HOW THE SYSTEM RESPONDS. IT GIVES YOU A LIST ON  
04:58PM 24 THE LEFT OF WHAT POSSIBILITIES YOU MIGHT TYPE NEXT. THEN OVER  
04:58PM 25 ON THE RIGHT-HAND SIDE IS SOMETHING THAT'S CALL A HELP MESSAGE

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:58PM 1 OR A HELP DESCRIPTION THAT GIVES SOMETHING THE ENGINEER HAS

04:59PM 2 WRITTEN TO GIVE YOU SORT OF A CLUE -- THE DEVELOPING ENGINEER

04:59PM 3 TO GIVE YOU A CLUE AS TO WHAT THIS KEY WORD MIGHT MEAN OR WHAT

04:59PM 4 IT MIGHT DO.

04:59PM 5 Q. AND GENERALLY SPEAKING, WHO AUTHORS THESE HELP DESCRIPTIONS

04:59PM 6 FOR EACH OF THESE COMMANDS THAT WE ARE SEEING HERE?

04:59PM 7 A. THE ENGINEER WHO DEVELOPS THE FUNCTIONALITY THAT DEVELOPS

04:59PM 8 THE COMMANDS.

04:59PM 9 Q. WAS THAT ALWAYS THE CASE OR WAS THERE A TIME THAT A

04:59PM 10 DIFFERENT PERSON MAY HAVE AUTHORED SOME OF THESE HELP

04:59PM 11 DESCRIPTIONS?

04:59PM 12 A. IN THE VERY BEGINNING YOU COULD TYPE QUESTION MARK AT THE

04:59PM 13 TOP LEVEL AND YOU WOULD GET SORT OF A LIST OF COMMANDS AND SOME

04:59PM 14 HELP MESSAGE WITH THAT.

04:59PM 15 AND IN THE EARLY '90S WE REVISED THE PARSER AND MADE IT

04:59PM 16 MORE POWERFUL, AND ADDED THE ABILITY TO TYPE QUESTION MARK AT

04:59PM 17 ANY POINT IN THIS -- AT ANY POINT WHEN PEOPLE WERE TYPING.

04:59PM 18 AND THE CONTRACTOR THAT WAS IN CHARGE OF DOING THAT

05:00PM 19 ACTUALLY PUT IN THESE HELP DESCRIPTIONS, THESE HELP STRINGS,

05:00PM 20 PUT THEM ALL IN AT THAT POINT.

05:00PM 21 AND THEN AS TIME HAS GONE ON AND ENGINEERS HAVE ADDED NEW

05:00PM 22 COMMANDS, THE ENGINEERS THAT ARE DOING THE NEW FUNCTIONALITY

05:00PM 23 THAT ARE CREATING THESE COMMANDS WILL ADD, THEY ARE RESPONSIBLE

05:00PM 24 FOR ADDING THESE HELP MESSAGES

05:00PM 25 Q. AND WHO IS THE NAME OF THE PERSON THAT CREATED THESE



DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

05:00PM 1 INITIAL HELP DESCRIPTIONS?

05:00PM 2 A. TERRY SLATTERY.

05:00PM 3 Q. AND, AGAIN, WERE THERE ANY CONSTRAINTS OR RESTRICTIONS OR  
05:00PM 4 FUNCTIONAL DEMANDS THAT WOULD TELL THE ENGINEERS YOU HAVE TO  
05:00PM 5 WRITE THE HELP DESCRIPTION IN THIS WAY?

05:00PM 6 A. NO, THERE'S BASICALLY, THE -- BE HELPFUL, BUT BEYOND THAT  
05:00PM 7 THERE WAS NOT ANY PARTICULAR REQUIREMENT THAT WAS PUT UPON  
05:00PM 8 THEM.

05:00PM 9 MR. PAK: I THINK WE CAN RECESS FOR TODAY,  
05:00PM 10 YOUR HONOR.

05:00PM 11 THE COURT: OKAY. ALL RIGHT. LADIES AND GENTLEMEN,  
05:00PM 12 WE ARE DONE WITH OUR PRESENTATION OF TESTIMONY FOR TODAY.

05:01PM 13 I'M GOING TO MAKE A SLIGHT MODIFICATION IN THE SCHEDULE.  
05:01PM 14 AND, COUNSEL, UNLESS THERE'S AN OBJECTION, WE CAN START AT 9:30  
05:01PM 15 TOMORROW. IS THAT GOING TO BE OKAY?

05:01PM 16 MR. PAK: THAT WORKS FOR US YOUR HONOR.

05:01PM 17 MR. VAN NEST: THAT'S FINE YOUR HONOR.

05:01PM 18 THE COURT: I KNOW YOUR SCHEDULE SAYS 10:00 AND  
05:01PM 19 NORMALLY I HAVE A LONG CRIMINAL CALENDAR BEFORE YOU ARRIVE ON  
05:01PM 20 TUESDAYS, BUT NOBODY WANTED TO COME INTO COURT TOMORROW SO I  
05:01PM 21 WILL BE VERY QUICK WITH THAT.

05:01PM 22 SO PLEASE GATHER -- MS. SALINAS-HARWELL WILL HAVE YOU  
05:01PM 23 GATHER SOME TIME BEFORE 9:30 SO WE CAN START PROMPTLY. WE WILL  
05:01PM 24 BE IN SESSION UNTIL NOON AND TAKE AN HOUR FOR LUNCH AND THEN  
05:01PM 25 THE REMAINDER OF THE DAY UNTIL 5:00.

08:15AM

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,	)	CV-14-5344-BLF
	)	
PLAINTIFF,	)	SAN JOSE, CALIFORNIA
	)	
VS.	)	NOVEMBER 29, 2016
	)	
ARISTA NETWORKS, INC.,	)	VOLUME 4
	)	
DEFENDANT	)	PAGES 534-819
	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: DAVID A. NELSON  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

08:42AM 1 ABOUT IN THE MOTION IN LIMINE HEARING.

08:42AM 2 THE COURT: OKAY.

08:42AM 3 MR. NELSON: AND I HAVE TO BE ABLE TO REFUTE THAT AS  
08:42AM 4 WELL.

08:42AM 5 THE COURT: ALL RIGHT.

08:42AM 6 MR. VAN NEST: ALL I WAS GOING TO SAY, YOUR HONOR, IS  
08:42AM 7 I THINK YOU HEARD THE OPENING BETTER THAN THEY DID. WHAT I  
08:42AM 8 SAID WAS THE ONLY CLAIM OF COPYING IS THE CLI.

08:42AM 9 THE COURT: YES, THAT'S RIGHT.

08:42AM 10 MR. VAN NEST: NOT ANY OF THE SOURCE CODE. THAT'S  
08:42AM 11 TRUE EVEN IN THE ITC. YOU KNOW DARN WELL THEY COMBED THAT  
08:42AM 12 SOURCE CODE TO SEE WHAT THEY COULD FIND AND THEY FOUND 0. SO  
08:42AM 13 ALL I TOLD THE JURORS WAS THAT THE ONLY CLAIM OF COPYING IN  
08:42AM 14 THIS CASE IS AS TO THE CLI, NOT THE SOURCE CODE INSIDE THE  
08:42AM 15 SWITCH, AND I WILL STAND BY THAT.

08:42AM 16 WE CAN CERTAINLY HAVE A DEBATE BEFORE THE CLOSING ARGUMENT  
08:42AM 17 AS TO WHAT I CAN OR CAN'T SAY. BUT FOR NOW THAT'S WHERE THE  
08:42AM 18 RECORD STANDS AND THAT'S AN ABSOLUTELY TRUTHFUL STATEMENT AND I  
08:43AM 19 HAD YOUR HONOR'S ADMONITIONS IN MIND THROUGHOUT THE OPENING.

08:43AM 20 THE COURT: MR. FERRALL, AS WE GO THROUGH THIS BLOG  
08:43AM 21 THOUGH THAT YOU ARE OBJECTING TO, AND SO --

08:43AM 22 MR. FERRALL: THE BLOG, YOUR HONOR, IS -- THIS IS ALL  
08:43AM 23 CIRCULAR TO THE DECLARATION. THE ISSUE STARTS WITH THE  
08:43AM 24 DECLARATION, AND I THINK THERE'S A BIT OF BOOT STRAPPING HERE  
08:43AM 25 ABOUT THE BLOG AND TRYING TO CONTRADICT THE BLOG. THE ONLY

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

09:41AM 1 A. I USED A COPY OF THE STANFORD SOURCE THAT I HAD PUT ASIDE  
09:41AM 2 AS MY DEVELOPMENT FOR ROUTER SOFTWARE. THAT WAS THE ORIGINAL  
09:41AM 3 PIECE. AND THEN MANY OF THESE WERE CREATED AFTER I LEFT  
09:41AM 4 STANFORD, I WAS WORKING AT CISCO.

09:41AM 5 Q. AND WHAT HAPPENED TO THE STANFORD VERSION OF THE CODE THAT  
09:41AM 6 DID NOT INCLUDE THESE COMMAND EXPRESSIONS?

09:41AM 7 A. I GAVE THAT BACK TO STANFORD.

09:41AM 8 Q. AND JUST TO MAKE IT CLEAR YOU TALKED ABOUT THE DISPUTE WITH  
09:41AM 9 STANFORD THAT HAPPENED. WHAT HAPPENED IN TERMS OF RESOLVING  
09:41AM 10 THAT DISPUTE?

09:41AM 11 A. THE CEO AT THE TIME MET WITH STANFORD AND NEGOTIATED A  
09:41AM 12 LICENSE FOR THE SOFTWARE THAT I HAD OTHERS HAD WRITTEN AT  
09:41AM 13 STANFORD UNIVERSITY. SO WE HAVE A PAID FOR LICENSE TO ALL THAT  
09:42AM 14 WORK.

09:42AM 15 Q. OKAY. AND CAN YOU THINK OF SOMEBODY ELSE WHO MIGHT HAVE  
09:42AM 16 WRITTEN SOME OF THE CODE THAT WAS LICENSED TO YOU UNDER THE  
09:42AM 17 STANFORD AGREEMENT?

09:42AM 18 A. BILL YEAGER WROTE THIS CODE.

09:42AM 19 Q. AND WHAT TYPE OF CODE DID MR. YEAGER WRITE?

09:42AM 20 A. HE WROTE SOMETHING CALLED AN ETHER TIP CODE OR TERMINAL  
09:42AM 21 SERVER, AND HE HAD WRITTEN SOME ROUTING CODE THAT I TOTALLY  
09:42AM 22 ENDED UP ARE REMOVING FROM THE TESTIMONY BECAUSE I WASN'T  
09:42AM 23 INTERESTED IN IT. AND THEN LATER ON I PUT IN ROUTING CODE OF  
09:42AM 24 MY OWN AUTHORSHIP.

09:42AM 25 Q. OKAY. AND DID EACH OF THESE MULTIWORD COMMANDS AND THE

REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:20AM 1 A. YES.

11:20AM 2 Q. SO AGAIN THIS IS THE SAME DOCUMENT MR. SILBERT WAS ASKING

11:20AM 3 YOU ABOUT, IT SAYS LOCAL ADDRESS, DO YOU SEE THAT?

11:20AM 4 A. YES.

11:20AM 5 Q. DID YOU USE LOCAL ADDRESS TO DEFINE THE INTERNET PROTOCOL

11:20AM 6 WHEN YOU WERE COMING UP WITH YOUR COMMANDS?

11:21AM 7 A. NO.

11:21AM 8 Q. OKAY. AND LOCAL -- AND IF YOU GO DOWN A LITTLE BIT FURTHER

11:21AM 9 THERE'S ANOTHER PARAGRAPH, CARE MUST BE TAKEN IN MAPPING

11:21AM 10 INTERNET ADDRESSES TO LOCAL NET ADDRESSES, DO YOU SEE THAT?

11:21AM 11 A. YES.

11:21AM 12 Q. AND AGAIN, DID YOU USE THE PHRASE LOCAL NET ADDRESSES WHEN

11:21AM 13 COMING UP WITH YOUR IP RELATED ADDRESS COMMANDS?

11:21AM 14 A. NO.

11:21AM 15 Q. LET'S LOOK AT SOME MORE. SO THIS IS ON 31567, WHICH IS

11:21AM 16 PAGE 11. DO YOU SEE THAT THIS IS AN EXAMPLE OF AN INTERNET

11:21AM 17 DATA GRAM HEADER?

11:21AM 18 A. YES, I DO.

11:21AM 19 Q. AND YOU EXPLAIN TO THE JURY WHAT THAT MEANS, WHAT IS AN

11:21AM 20 INTERNET DATA GRAM HEADER THAT'S AT THE BOTTOM?

11:21AM 21 A. SO WHEN YOU ARE SENDING DATA USING THE INTERNET PROTOCOL,

11:22AM 22 THERE'S INFORMATION, I REFER TO LIKE THE ADDRESS ON AN ENVELOPE

11:22AM 23 OR SOMETHING LIKE THAT. THIS IS SORT OF THE FORMAL HEADER ON

11:22AM 24 THE ENVELOPE, IF YOU WILL, SORT OF THE LEADING PIECE OF

11:22AM 25 INFORMATION THAT AN IP ROUTER WOULD ACTUALLY LOOK IN TO MAKE

REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:22AM 1 FORWARDING DECISIONS.

11:22AM 2 Q. AND LET'S SEE HOW THIS INDUSTRY DOCUMENT TALKED ABOUT THE  
11:22AM 3 ADDRESSES THAT ARE USED IN THIS INTERNET DATA GRAM HEADER.

11:22AM 4 MR. FISHER, CAN YOU HIGHLIGHT SOURCE ADDRESS, THEN CAN YOU  
11:22AM 5 ALSO HIGHLIGHT DESTINATION ADDRESS.

11:22AM 6 AGAIN, MR. LOUGHEED, DID YOU USE THE PHRASES, SOURCE  
11:22AM 7 ADDRESS AND DESTINATION ADDRESS WHEN YOU WERE COMING UP WITH  
11:22AM 8 THE IP ADDRESS COMMANDS

11:22AM 9 A. NO.

11:22AM 10 Q. OKAY. LET'S GO THROUGH SOME MORE EXAMPLES. THIS IS  
11:22AM 11 PAGE 23. AND THIS IS 31579. AND IF YOU ZERO IN ON INTERNET  
11:23AM 12 HEADER, IN THE MIDDLE OF PAGE 23, AND AGAIN, SIR, DID YOU USE  
11:23AM 13 THE PHRASE INTERNET HEADER OR INTERNET HEADER PADDING IN COME  
11:23AM 14 OF YOUR COMMANDS RELATED TO IP ADDRESSING?

11:23AM 15 A. NO.

11:23AM 16 Q. ONE LAST EXAMPLE FROM THIS DOCUMENT. LET'S LOOK AT  
11:23AM 17 PAGE 32, WHICH IS 31588.

11:23AM 18 IF YOU COULD BLOW UP THE MIDDLE SECTION THERE, MR. FISHER.

11:23AM 19 CAN YOU -- DO YOU SEE THAT IT SAYS SRC, EQUALS SOURCE  
11:23AM 20 ADDRESS. DST, EQUALS DESTINATION ADDRESS. DO YOU SEE THAT?

11:23AM 21 A. YES.

11:23AM 22 Q. AND AGAIN, YOU DIDN'T USE THE ACRONYMS SRC, OR DST, EVEN  
11:24AM 23 THOUGH THEY ARE DESCRIBED IN THIS DOCUMENT WHEN YOU WERE COMING  
11:24AM 24 UP WITH THE IP ADDRESS RELATED COMMANDS, CORRECT?

11:24AM 25 MR. SILBERT: OBJECT TO THE LEADING, YOUR HONOR.

REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:24AM 1 MR. PAK: LET ME ASK IT THIS WAY.

11:24AM 2 Q. YOU DIDN'T USE SRC, AND DST WHEN COMING UP WITH THE IP  
11:24AM 3 ADDRESS COMMANDS?

11:24AM 4 A. NO, I DID NOT.

11:24AM 5 Q. STEP BACK ONE PAGE, MR. FISHER. IF YOU CAN BLOW UP THE  
11:24AM 6 SECTION THAT SAYS 3.3, INTERFACES.

11:24AM 7 I WANT YOU TO READ INTO THE RECORD, MR. LOUGHEED, WHAT THE  
11:24AM 8 ACTUAL DOCUMENT SAYS ABOUT INTERFACE AND USER INTERFACES.

11:24AM 9 A. YES. THE FUNCTIONAL DESCRIPTION OF USER INTERFACES TO IP  
11:24AM 10 IS, AT BEST, FICTIONAL, SINCE EVERY OPERATING SYSTEM WILL HAVE  
11:24AM 11 DIFFERENT FACILITIES.

11:24AM 12 CONSEQUENTLY, WE MUST WARN READERS THAT DIFFERENT IP  
11:25AM 13 IMPLEMENTATIONS MAY HAVE DIFFERENT USER INTERFACES. HOWEVER,  
11:25AM 14 ALL IP'S MUST PROVIDE A CERTAIN MINIMUM SET OF SERVICES TO  
11:25AM 15 GUARANTEE THAT ALL IP IMPLEMENTATIONS CAN SUPPORT THE SAME  
11:25AM 16 PROTOCOL HIERARCHY. THIS SECTION SPECIFIES THE FUNCTIONAL  
11:25AM 17 INTERFACES REQUIRED OF ALL IP IMPLEMENTATIONS.

11:25AM 18 Q. AND LET'S PAUSE YOU THERE. AND AGAIN, FOR THE JURY THIS IS  
11:25AM 19 PAGE 31 OF 6944; IS THAT CORRECT?

11:25AM 20 A. YES.

11:25AM 21 Q. OKAY. SO CAN YOU DESCRIBE FOR THE JURY WHAT THE DIFFERENCE  
11:25AM 22 IS BETWEEN USER INTERFACES AND FUNCTIONAL INTERFACES?

11:25AM 23 A. SO THE FUNCTIONAL INTERFACE THAT IP, AS DEFINED BY THE  
11:25AM 24 STANDARDS IS, YOU NEED TO EXCHANGE DATA GRAMS THAT HAVE THIS  
11:26AM 25 PARTICULAR FORMAT, THE DATA IS ARRANGED IN A PARTICULAR WAY,

REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:26AM 1 AND IF DATA IS RECEIVED WITH PARTICULAR SET, A VALUE SET, THAT  
11:26AM 2 THE SYSTEM SHOULD REACT ACCORDING TO WHAT THE PROTOCOL SAYS,  
11:26AM 3 WHAT THE STANDARD SAYS.

11:26AM 4 WHEN IT COMES TO USER INTERFACES, THEY ARE SILENT ON HOW TO  
11:26AM 5 DO USER INTERFACES, THAT IS UP TO EACH, EACH COMPANY OR EACH  
11:26AM 6 PERSON THAT IMPLEMENTS THOSE FUNCTIONAL REQUIREMENTS.

11:26AM 7 ONE WAY IS YOU COULD DO A COMMAND-LINE INTERFACE TO GO AND  
11:26AM 8 DO THIS STUFF, YOU COULD HAVE A GUI THAT MONITORS AND  
11:26AM 9 CONFIGURES THE FUNCTIONAL STUFF. OR YOU COULD, YOU KNOW, HAVE,  
11:26AM 10 AS I DESCRIBED, A MENU-BASED SYSTEM THAT WOULD DO IT.

11:26AM 11 AND THE DOCUMENTS, THE INTERNET PROTOCOL SPECIFICATION IS  
11:27AM 12 SILENT ON ACTUALLY HOW THE USER INTERFACE LOOKS. THAT'S UP TO  
11:27AM 13 THE PEOPLE THAT MANUFACTURE THE STUFF.

11:27AM 14 Q. YOU HAVE BEEN IN THE INDUSTRY FOR 30 YEARS PLUS, CORRECT?

11:27AM 15 A. YES.

11:27AM 16 Q. YOU MENTION THAT YOU ALSO WERE PART OF THE BEGINNINGS OF  
11:27AM 17 THE BGP PROTOCOL THAT WAS RATIFIED BY THE INDUSTRY STANDARD  
11:27AM 18 ORGANIZATIONS, CORRECT?

11:27AM 19 A. YES.

11:27AM 20 Q. NOW IN ALL OF YOUR EXPERIENCE, ARE YOU AWARE OF ANY  
11:27AM 21 INDUSTRY STANDARDS ORGANIZATION THAT HAS RATIFIED A STANDARD OR  
11:27AM 22 AN INDUSTRY STANDARD FOR A COMMAND-LINE INTERFACE FOR  
11:27AM 23 NETWORKING EQUIPMENT?

11:27AM 24 A. THERE IS NO SUCH THING.

11:27AM 25 Q. AND AGAIN, MR. SILBERT ASKED YOU SOME QUESTIONS OF SOME



REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:27AM 1 DOCUMENTS WHERE PHRASES LIKE INDUSTRY STANDARD AND DE FACTO

11:27AM 2 STANDARD WERE USED, DO YOU RECALL THAT?

11:27AM 3 A. I RECALL THAT.

11:27AM 4 Q. BUT THOSE WERE NOT YOUR WORDS, CORRECT?

11:27AM 5 A. THOSE ARE NOT MY WORDS.

11:27AM 6 Q. AND SITTING HERE TODAY, YOU DON'T KNOW WHAT THE AUTHORS OF  
11:27AM 7 THOSE WORDS MEANT WHEN THEY USED THEM IN THAT CONTENT?

11:27AM 8 MR. SILBERT: OBJECTION TO THE LEADING.

11:28AM 9 BY MR. PAK:

11:28AM 10 Q. DO YOU KNOW, SIR, WHAT THOSE AUTHORS MEANT WHEN THEY USED  
11:28AM 11 THOSE PHRASES?

11:28AM 12 A. I DON'T KNOW WHAT THEY MEANT.

11:28AM 13 Q. AND LET'S LOOK AT ONE OF THOSE DOCUMENTS, 7996, WHICH  
11:28AM 14 MR. SILBERT USED.

11:28AM 15 IF YOU GO TO THE SECOND PAGE OF THAT, MR. FISHER.

11:28AM 16 THIS WAS THAT CISCO LIVE CONFERENCE, DO YOU RECALL THAT?

11:28AM 17 A. YES, I RECALL THIS DOCUMENT.

11:28AM 18 Q. IT SAYS JOSEPH J. RINEHART, MBA, IT SAYS SENIOR EDUCATION  
11:28AM 19 SPECIALIST AT CISCO SYSTEMS, THAT'S THE PERSON WHO AUTHORED  
11:28AM 20 THIS PRESENTATION?

11:28AM 21 A. YES.

11:28AM 22 Q. HAVE YOU HEARD OF MR. JOSEPH J. RINEHART UNTIL TODAY?

11:28AM 23 A. I HAVE NOT HEARD OF HIM.

11:28AM 24 Q. IS HE AN EXECUTIVE IN THE COMPANY?

11:28AM 25 A. NO.

REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:28AM 1 Q. TO YOUR KNOWLEDGE IS HE A CISCO FELLOW?

11:28AM 2 A. NO.

11:28AM 3 Q. DO YOU HAVE ANY IDEA WHAT A SENIOR EDUCATION SPECIALIST  
11:28AM 4 DOES AT CISCO?

11:28AM 5 A. PERHAPS THEY PRODUCE SLIDE DECKS. I DON'T KNOW.

11:29AM 6 Q. BUT THERE WERE LOTS OF QUESTIONS IN YOUR CROSS-EXAMINATION  
11:29AM 7 ABOUT, WELL, OTHER PEOPLE ARE DOING THIS, OTHER PEOPLE ARE  
11:29AM 8 DOING THAT, DO YOU RECALL THAT FROM MR. SILBERT?

11:29AM 9 A. I RECALL THAT.

11:29AM 10 Q. JUST TO MAKE IT CLEAR, ARE YOU AWARE OF ANYONE AT -- THAT  
11:29AM 11 HAD DONE ANY OF THE MULTIWORD COMMANDS THAT WE ARE ASSERTING IN  
11:29AM 12 THIS CASE PRIOR TO YOUR ORIGINATION OF THOSE COMMANDS?

11:29AM 13 A. I'M NOT AWARE OF -- I WAS THE AUTHOR, I WAS THE CREATOR OF  
11:29AM 14 THOSE MULTIWORD COMMANDS.

11:29AM 15 Q. AND JUST TO BE CLEAR, THERE WERE SOME QUESTIONS ABOUT,  
11:29AM 16 AGAIN, A LATER DECK MANUAL WHERE THEY WERE ASKING YOU QUESTIONS  
11:29AM 17 AS TO, YOU KNOW, THIS IS 1993, HAS SOME COMMANDS THAT LOOK  
11:29AM 18 SIMILAR TO THE COMMANDS THAT CISCO DID; DO YOU RECALL THOSE  
11:29AM 19 LINES OF QUESTIONS?

11:29AM 20 A. I DO RECALL THAT.

11:29AM 21 Q. AND YOU SAID WELL, THE 1993 THAT CISCO OFFERED WAS THE  
11:29AM 22 EARLIEST DATE FOR WHICH WE HAD EVIDENCE THAT CERTAIN COMMANDS  
11:29AM 23 WERE ADDED TO THE CISCO SYSTEM, DO YOU RECALL THAT?

11:29AM 24 A. I DID SAY THAT.

11:30AM 25 Q. AND THEN YOU SAID, BUT IT'S MY RECOLLECTION THAT MANY OF

REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:30AM 1 THESE COMMANDS WERE CREATED MUCH EARLIER IN TIME, DO YOU RECALL  
11:30AM 2 THAT TESTIMONY?

11:30AM 3 A. YES.

11:30AM 4 Q. AND CAN YOU GIVE A SENSE TO THE JURY AS TO THE TIME PERIOD  
11:30AM 5 WHEN MANY OF THESE COMMANDS THAT WERE ASKED BY YOU WOULD HAVE  
11:30AM 6 BEEN CREATED?

11:30AM 7 A. WHICH --

11:30AM 8 Q. FOR EXAMPLE THE BGP SET OF COMMANDS.

11:30AM 9 A. IN JANUARY OF 1989 YAKOV REKHTER OF IBM AND I COLLABORATED  
11:30AM 10 ON DESIGNS A NETWORK PROTOCOL CALLED BGP. THE INTERNET WAS  
11:30AM 11 HAVING TOO MANY NETWORKS FOR THE EXISTING PROTOCOLS TO HANDLE  
11:30AM 12 SO WE NEEDED TO CREATE SOMETHING NEW.

11:30AM 13 AND WE HAD MET AT A CONFERENCE. WE SKETCHED IT ON TWO  
11:30AM 14 COPIES OF NAPKINS. I TOOK ONE OF THOSE COPIES, YAKOV TOOK THE  
11:30AM 15 OTHER. HE WENT BACK TO IBM, I WENT BACK TO CISCO AND WE  
11:30AM 16 CREATED THE FIRST BGP IMPLEMENTATION, INCLUDING THE COMMANDS TO  
11:31AM 17 SOME OF THE FUNDAMENTAL COMMANDS TO MONITOR THAT STUFF.

11:31AM 18 SO WITHIN A FEW MONTHS WE ACTUALLY HAD THE VERY FIRST TWO  
11:31AM 19 IMPLEMENTATIONS TALKING TO ONE ANOTHER, AND SHORTLY THEREAFTER  
11:31AM 20 WE PUBLISHED THE FIRST -- THE FIRST DOCUMENT THAT SORT OF  
11:31AM 21 DEFINED THE PROTOCOL SO THAT OTHERS COULD LOOK AT IT AND COME  
11:31AM 22 UP WITH THEIR OWN IMPLEMENTATIONS. AND WITHIN SIX MONTHS THERE  
11:31AM 23 WAS ANOTHER IMPLEMENTATION AND PEOPLE -- PEOPLE HAVE BEEN ABLE  
11:31AM 24 TO CREATE -- BGP IS NOW A FOUNDATIONAL PROTOCOL IN THE INTERNET  
11:31AM 25 Q. AND JUST TO BE CLEAR, YOU WERE ONE OF THE FIRST OR YOU WERE

REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:31AM 1 ONE OF THE TWO COAUTHORS OF THAT WHOLE PROTOCOL; IS THAT  
11:31AM 2 CORRECT?

11:31AM 3 A. YES.

11:31AM 4 Q. AND I WANT TO NOW, MR. FISHER, GO TO THE SLIDE THAT TALKS  
11:31AM 5 ABOUT MODES AND PROMPTS.

11:32AM 6 YES. WE WILL START HERE. SO DO YOU RECALL THAT MR.  
11:32AM 7 SILBERT ASKED YOU ABOUT THE MODES AND PROMPTS, AND HE FOCUSED  
11:32AM 8 YOUR ATTENTION ON THE USER AND PRIVILEGE EXEC MODES, DO YOU  
11:32AM 9 RECALL THOSE QUESTIONS?

11:32AM 10 A. YES.

11:32AM 11 Q. BUT YOU UNDERSTAND, SIR, THAT CISCO IS NOT CLAIMING THE  
11:32AM 12 PROTECTION OVER INDIVIDUAL MODES?

11:32AM 13 A. CORRECT.

11:32AM 14 Q. AND YOU UNDERSTAND THAT CISCO IS CLAIMING PROTECTION OVER  
11:32AM 15 THE COMBINATION OF ALL FOUR MODES AND THE ASSOCIATED PROMPTS IN  
11:32AM 16 THIS CASE; DO YOU UNDERSTAND THAT?

11:32AM 17 A. YES, THAT'S MY UNDERSTANDING.

11:32AM 18 Q. AND LET'S LOOK AT THOSE ALL FOUR MODES, PARTICULARLY GLOBAL  
11:32AM 19 CONFIGURATION MODE AND THE INTERFACE MODE.

11:32AM 20 CAN YOU REMIND THE JURY AGAIN WHAT THOSE MODES WERE?

11:32AM 21 A. THE GLOBAL CONFIGURATION MODE WAS SOMETHING THAT I CREATED  
11:32AM 22 WHEN I NEEDED TO BE ABLE TO LOAD CONFIGURATION COMMANDS INTO  
11:32AM 23 THE SYSTEM INTERACTIVELY.

11:32AM 24 PREVIOUSLY THERE HAD BEEN, WE WOULD PUT THEM IN A FILE, WE  
11:32AM 25 WOULD DOWNLOAD THEM OVER THE NETWORK, AND THAT WORKED JUST

REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:33AM 1 FINE, IN CERTAIN SITUATIONS. BUT IF I WAS AT A TRADE SHOW OR  
11:33AM 2 AT A CUSTOMER SITE THAT DIDN'T HAVE THAT INFRASTRUCTURE IN  
11:33AM 3 PLACE, I NEEDED SOME WAY TO BE ABLE TO GO IN TO THE TERMINAL  
11:33AM 4 AND TYPE THESE COMMANDS AND ENTER THEM THAT WAY. AND THAT'S  
11:33AM 5 HOW I ENDED UP CREATING THE GLOBAL CONFIGURATION MODE.

11:33AM 6 Q. AND DO YOU REMEMBER TALKING ABOUT THE INTERFACE MODE, YOU  
11:33AM 7 TALKED ABOUT THAT BEING ABLE TO REMEMBER THINGS, CAN YOU  
11:33AM 8 DESCRIBE WHAT THAT MODE IS?

11:33AM 9 A. I THINK I TALKED EXTENSIVELY ABOUT THAT, BUT THAT IS  
11:33AM 10 BASICALLY MY REALIZATION VERY EARLY AT CISCO THAT WE WERE GOING  
11:33AM 11 TO HAVE ALL SORTS OF DIFFERENT PARAMETERS THAT WE WANTED TO  
11:33AM 12 CONFIGURE ON AN INTERFACE. AND ONE LONG COMMAND OR A SERIES OF  
11:33AM 13 COMMANDS WAS -- DIDN'T PARTICULARLY APPEAL TO ME. SO I CREATED  
11:33AM 14 A MODE WHERE YOU COULD SAY INTERFACE, THE INTERFACE NAME, AND  
11:33AM 15 IT REMEMBERED THAT. AND THEN YOU COULD TYPE WHAT ARE CALLED  
11:34AM 16 INTERFACE-SPECIFIC COMMANDS, SUBCOMMANDS UNDERNEATH THAT.

11:34AM 17 AND WHEN YOU TYPED IN A COMMAND THAT WAS NOT AN INTERFACE  
11:34AM 18 SPECIFIC COMMAND, IT WOULD POP BACK TO THE GLOBAL CONFIGURATION  
11:34AM 19 LEVEL

11:34AM 20 Q. SO AGAIN JUST TO REMIND THE JURY, WHO CREATED THE GLOBAL  
11:34AM 21 CONFIGURATION AND INTERFACE MODES?

11:34AM 22 A. I DID.

11:34AM 23 Q. WERE YOU AWARE OF ANY OTHER COMPANY OR ORGANIZATION THAT  
11:34AM 24 HAD THOSE TWO PARTICULAR MODES AND THE ASSOCIATED PROMPTS?

11:34AM 25 A. I WAS TOTALLY AWARE OF ANY COMPANY THAT HAD ANYTHING LIKE

REDIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

11:34AM 1

THAT.

11:34AM 2

Q. SO IF I LOOK AT THE COLLECTION OF ALL FOUR MODES AND

11:34AM 3

PROMPTS HERE, ARE YOU AWARE OF ANY OTHER COMPANY IN THE WORLD

11:34AM 4

THAT HAD DONE THIS COMBINATION OF MODES AND PROMPTS BEFORE YOU

11:34AM 5

DID IT?

11:34AM 6

A. NO.

11:34AM 7

Q. LASTLY, I WANT TO TALK BRIEFLY ABOUT STANFORD, THERE WERE

11:34AM 8

SOME QUESTIONS.

11:34AM 9

JUST TO REMIND THE JURY AGAIN, ALL DISPUTES WITH RESPECT TO

11:34AM 10

STANFORD, WHAT HAPPENED TO THOSE DISPUTES; DO YOU RECALL WHAT

11:34AM 11

HAPPENED?

11:34AM 12

A. WE NEGOTIATED A LICENSE -- WE NEGOTIATED AND PAID FOR A

11:35AM 13

LICENSE OF THAT SOFTWARE.

11:35AM 14

Q. AND YOU UNDERSTAND THAT THERE'S AN EXCLUSIVE LICENSE TO

11:35AM 15

CISCO FOR ALL THE WORK THAT WAS DONE AT STANFORD RELATED IOS?

11:35AM 16

A. YES.

11:35AM 17

Q. AND CAN YOU BRIEFLY DESCRIBE FOR THE JURY THE TYPE OF

11:35AM 18

RELATIONSHIP THAT CISCO AND STANFORD HAS TODAY AND HAS HAD FOR

11:35AM 19

THE LAST 20 YEARS OR SO?

11:35AM 20

A. IT'S A VERY FRIENDLY CORDIAL RELATIONSHIP. ACTUALLY SINCE

11:35AM 21

2001 OR 2002, THE -- JOHN HENNESSY WHO WAS THE PRESIDENT OF

11:35AM 22

STANFORD UNIVERSITY JUST UP UNTIL THE LAST YEAR IS STILL ON OUR

11:35AM 23

BOARD OF DIRECTORS.

11:35AM 24

MR. PAK: THANK YOU, YOUR HONOR. I WILL PASS THE

11:35AM 25

WITNESS.

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

11:48AM 1 A. I HAVE -- I HAVE BEEN ON THE PARSER-POLICE MAILING LIST  
11:48AM 2 PROVIDING FEEDBACK. I HAVE DEVELOPED A COMMAND MYSELF AND GOT  
11:48AM 3 FEEDBACK FROM THE PARSER-POLICE, AND I DEVELOPED A DOCUMENT  
11:48AM 4 CALLED THE PARSER-POLICE MANIFESTER.

11:48AM 5 Q. ALL RIGHT. SO LET'S TALK ABOUT THE PARSER-POLICE  
11:48AM 6 MANIFESTER.

11:48AM 7 CAN YOU TELL ME WHAT THE PARSER-POLICE MANIFESTER IS?

11:48AM 8 A. THE PARSER-POLICE MANIFESTER IS A DOCUMENT THAT I AUTHORED  
11:48AM 9 WHICH PROVIDES A SET OF GUIDELINES TO ENGINEERS ABOUT THE  
11:48AM 10 CONTENTS OR THE WAY THEY SHOULD DEVELOP THE USER INTERFACE, THE  
11:48AM 11 COMMAND-LINE INTERFACE TO CISCO PRODUCTS.

11:48AM 12 Q. AND WHEN DID YOU AUTHOR THAT DOCUMENT?

11:48AM 13 A. SOME TIME IN THE LATE 1990'S.

11:48AM 14 Q. DO YOU KNOW WHETHER THAT'S A DOCUMENT THAT'S BEEN  
11:48AM 15 MAINTAINED AT CISCO?

11:48AM 16 A. IT HAS. IT GETS PERIODICALLY REVISED AND THERE IS A  
11:49AM 17 CURRENT VERSION IN OUR DOCUMENT CONTROL SYSTEM THAT YOU CAN  
11:49AM 18 PULL UP.

11:49AM 19 Q. HOW ABOUT -- IS IT SOMETHING THAT'S EVER REFERRED TO?

11:49AM 20 A. A LOT OF INTERNAL PROCESSES REFER TO USING THE  
11:49AM 21 PARSER-POLICE AND -- THE PARSER-POLICE MANIFESTER IS KEY TO  
11:49AM 22 UNDERSTANDING HOW TO BEST USE THE PARSER-POLICE DISCUSSION  
11:49AM 23 GROUP.

11:49AM 24 Q. SO I WANT TO TURN TO THAT IN A MINUTE. THE TERM POLICE,  
11:49AM 25 THAT KIND OF TO ME, THAT'S AUTHORITY, RIGHT?

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

11:49AM 1 A. YOU WOULD THINK SO. BUT IT'S ACTUALLY NOT AN AUTHORITY.

11:49AM 2 IT IS A DISCUSSION GROUP. IT'S MORE OF AN ADVICE GROUP.

11:49AM 3 Q. AND WHAT DO YOU MEAN BY THAT? GIVE ME AN EXAMPLE?

11:49AM 4 A. SO THE -- AN ENGINEER COMING UP WITH A NEW COMMAND WILL

11:49AM 5 PROPOSE THE SYNTAX TO THE PARSER-POLICE FOR FEEDBACK. AND

11:49AM 6 THERE ARE A GROUP OF VOLUNTEERS WHO STAFF THIS LIST WHO PROVIDE

11:50AM 7 FEEDBACK BASED ON WHAT THEY BELIEVE ARE BEST PRACTICES.

11:50AM 8 AND THE DISCUSSIONS, AS YOU CAN IMAGINE, WE'VE GOT

11:50AM 9 EMPOWERED, OPINIONATED AND SMART ENGINEERS, THEY MAY NOT REACH

11:50AM 10 A CONCLUSION THAT EVERYBODY AGREES WITH. BUT THE POINT IS IT'S

11:50AM 11 A SET OF FEEDBACK.

11:50AM 12 AND AT THE END OF THE DAY, THE ENGINEER WRITING THE COMMAND

11:50AM 13 HAS THE SAY OF HOW IT GOES INTO THE CODE, HOW THE COMMAND GETS

11:50AM 14 WRITTEN.

11:50AM 15 Q. SO LET ME TURN TO -- OR HAVE YOU TURN TO, I GAVE YOU THE

11:50AM 16 BINDER, WE SHOULD USE IT. EXHIBIT 851 SHOULD BE BEHIND A TAB

11:50AM 17 THERE.

11:50AM 18 A. I HAVE IT.

11:50AM 19 Q. DO YOU SEE THAT?

11:50AM 20 A. I DO.

11:50AM 21 Q. DO YOU RECOGNIZE THIS DOCUMENT?

11:50AM 22 A. I DO.

11:50AM 23 Q. AND CAN YOU TELL US WHAT IT IS?

11:50AM 24 A. THIS IS ONE OF THE EARLY VERSIONS OF THE PARSER-POLICE

11:51AM 25 MANIFESTER.



DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

11:51AM 1 Q. IS THIS A DOCUMENT THAT YOU AUTHOR?

11:51AM 2 A. THIS IS A DOCUMENT THAT I AUTHORED.

11:51AM 3 MR. NELSON: SO YOUR HONOR, AT THIS POINT I MOVE FOR  
11:51AM 4 ADMISSION OF EXHIBIT 851 INTO EVIDENCE.

11:51AM 5 THE COURT: ANY OBJECTION?

11:51AM 6 MR. FERRALL: NO OBJECTION.

11:51AM 7 THE COURT: ALL RIGHT. IT WILL BE ADMITTED.

11:51AM 8 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 851, HAVING BEEN  
11:51AM 9 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO  
11:51AM 10 EVIDENCE.)

11:51AM 11 MR. NELSON: ALL RIGHT. SO LET'S GO -- WELL, WE  
11:51AM 12 MIGHT AS WELL START AT THE BEGINNING.

11:51AM 13 Q. THERE'S A SECTION THERE CALLED PURPOSE, DO YOU SEE THAT?

11:51AM 14 A. YES.

11:51AM 15 Q. CAN YOU TELL US WHAT THIS IS?

11:51AM 16 A. THIS IS TO INTRODUCE PEOPLE WHO HAVE NOT ENCOUNTERED THE  
11:51AM 17 PARSER-POLICE DISCUSSION GROUP BEFORE TO UNDERSTAND WHAT THE  
11:51AM 18 PURPOSE OF THE MAILING LIST IS.

11:51AM 19 Q. SO I WANT TO HIGHLIGHT A LITTLE BIT HERE WHERE IT SAYS, TO  
11:51AM 20 ENSURE CONSISTENCY, USABILITY AND FRIENDLINESS OF THE  
11:51AM 21 CONFIGURATION INTERFACE TO CISCO IOS; DO YOU SEE THAT?

11:51AM 22 A. YES.

11:51AM 23 Q. SO WHAT DID YOU MEAN BY THAT, WHAT WERE YOU TRYING TO  
11:52AM 24 CONVEY?

11:52AM 25 A. NO, THERE'S A CERTAIN AESTHETIC TO THE DESIGN OF THE USER

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

11:52AM 1 INTERFACE, IT'S ARRANGED IN A HIERARCHY, THE WORDS SEND TO  
11:52AM 2 APPEAR IN A SEQUENCE, AND THERE'S A SENSE OF HOW IT SHOULD BE,  
11:52AM 3 AND WE -- WHEN IT WORKS WELL, WE SAY IT'S CONSISTENT, MEANING  
11:52AM 4 THAT IT BEHAVES THE WAY YOU EXPECT AS YOU GO THROUGH IT.

11:52AM 5 IT'S USEABLE MEANING YOU CAN UNDERSTAND WHAT THE COMMANDS  
11:52AM 6 MEAN, AND IT'S FRIENDLY, MEANING IT'S EASY TO USE AND NOT  
11:52AM 7 CRAZY.

11:52AM 8 Q. WHY DID YOU THINK THAT WAS IMPORTANT TO CONVEY TO THE  
11:52AM 9 ENGINEERS THAT MIGHT BE COMING UP WITH COMMANDS?

11:52AM 10 A. IF YOU'RE GENERATING A COMMAND, EVEN FOR THE FIRST TIME,  
11:52AM 11 YOU MAY NOT HAVE ANY CONTEXT FOR THE COMMAND. SO IT'S  
11:52AM 12 IMPORTANT TO UNDERSTAND THAT THERE ARE ELEMENTS OF COMMAND  
11:52AM 13 DEVELOPMENT THAT ARE IMPORTANT, INCLUDING BACKWARDS  
11:52AM 14 COMPATIBILITY WITH WHAT EXISTS, THINKING ABOUT FUTURE  
11:52AM 15 EXTENSIBILITY, CONSIDERING THE ENGINEER'S OWN PREFERENCES AND  
11:53AM 16 THINKING ABOUT WHAT THE CUSTOMER MIGHT HAVE. SO THESE ARE ALL  
11:53AM 17 COMPETING CONCERNS.

11:53AM 18 SO YOU WANT TO LET THEM KNOW THAT THESE THINGS ARE  
11:53AM 19 CONTAINED, I THINK, IN CONSISTENCY, USABILITY AND FRIENDLINESS.

11:53AM 20 Q. AND ONE OF THE TERMS YOU USE THAT I HEARD A FEW TIMES IS  
11:53AM 21 EXTENSIBILITY.

11:53AM 22 A. YES.

11:53AM 23 Q. CAN YOU TELL ME WHAT YOU MEAN BY THAT?

11:53AM 24 A. WHEN FEATURES GET ADDED TO THE PRODUCT ALL THE TIME AND  
11:53AM 25 THEY -- WHEN YOU ARE CREATING A COMMAND FOR THE FIRST TIME,

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:11PM 1

THERE?

01:11PM 2

A. SO, ISDN IS A TECHNOLOGY, A DIGITAL COMMUNICATIONS

01:11PM 3

TECHNOLOGY. AND THIS COMMAND, THE PERSON WRITING THE ISDN,

01:12PM 4

COMMAND CREATED TWO CHILDREN IN THE DEBUG HIERARCHY,

01:12PM 5

SPECIFICALLY ISDN, Q931 AND ISDN Q921 WHICH ARE DIFFERENT

01:12PM 6

ASPECTS OF THE ISDN PROTOCOL.

01:12PM 7

AND WHAT THEY DID WAS THEY MADE EACH, EVEN -- THE BETTER

01:12PM 8

WAY TO HAVE DONE IT WOULD HAVE BEEN TO TAKE ISDN THE CHILD AND

01:12PM 9

INTRODUCE Q921 AND Q931 AS CHILDREN SO THAT THE HIERARCHY WOULD

01:12PM 10

BE GROUPED TOGETHER.

01:12PM 11

I RELATED ISDN COMMANDS, WOULD BE UNDER A HIERARCHY INSTEAD

01:12PM 12

OF A BROADER GROUP. THIS WOULD MAKE THE ISDN COMMANDS EASIER

01:12PM 13

TO FIND IF THEY WERE GROUPED AS A HIERARCHY.

01:12PM 14

Q. IS THAT THE CASE IN THE CISCO CLI?

01:12PM 15

A. IT IS NOT. IT IS NOT.

01:12PM 16

AGAIN, THE ENGINEER WAS ABLE TO USE THEIR OWN CREATIVITY

01:12PM 17

AND JUDGMENT IN MAKING THE COMMANDS, AND THE AESTHETIC WOULD

01:13PM 18

HAVE LEAD US TO SEPARATE OR TO THINK EXTENSIBLY WAS THE

01:13PM 19

GUIDELINE, THE GUIDELINE WOULD BE TO THINK EXTENSIBLY. AND IN

01:13PM 20

THIS CASE I'M AFRAID IT WAS OVERLOOKED.

01:13PM 21

Q. NOW I WANT TO TALK ABOUT ANOTHER ONE. IF WE GO TO NUMBER

01:13PM 22

FOUR IN YOUR LIST WHICH IS ON THE NEXT PAGE?

01:13PM 23

A. YES.

01:13PM 24

Q. IT SAYS WATCH FOR COLLISIONS; DO YOU SEE THAT?

01:13PM 25

A. I DO.

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:13PM 1 Q. CAN YOU EXPLAIN TO ME WHAT THAT IS?

01:13PM 2 A. OKAY. SO LET'S GO BACK TO THE COMMAND SHOW, FOR EXAMPLE.

01:13PM 3 THE COMMAND SHOW IS ONE OF THE MOST COMMON COMMANDS THAT WE

01:13PM 4 TYPE IN THE USER INTERFACE.

01:13PM 5 Q. AND LET ME STOP YOU THERE.

01:13PM 6 WHEN YOU SAY THE USER INTERFACE, WHAT USER INTERFACE ARE

01:13PM 7 YOU REFERRING TO?

01:13PM 8 A. THAT WOULD BE THE COMMAND-LINE INTERFACE.

01:13PM 9 Q. FOR WHOM?

01:13PM 10 A. THE CISCO DEVICES, THE CISCO IOS AND RELATED OPERATING

01:13PM 11 SYSTEMS.

01:13PM 12 THE SHOW COMMAND COULD BE ABBREVIATED AS SH, BECAUSE AS

01:14PM 13 LONG AS YOU TYPE ENOUGH CHARACTERS TO MAKE THE WORD UNIQUE, IT

01:14PM 14 WOULD BE ACCEPTED.

01:14PM 15 SO IF, FOR EXAMPLE, AN ENGINEER WANTED TO INTRODUCE A NEW

01:14PM 16 COMMAND, SHOW CASE, THIS WOULD CAUSE A PROBLEM. THIS WOULD BE

01:14PM 17 A COLLISION BECAUSE NOW AN ENGINEER THAT WOULD TYPE SHOW WOULD

01:14PM 18 GET AN ERROR BECAUSE THE PARSER WOULD SAY WELL, I DON'T KNOW

01:14PM 19 WHETHER YOU MEAN SHOW OR SHOW CASE.

01:14PM 20 SIMILARLY, THE ABBREVIATED FORM SH, IF THEY CREATED A TOP

01:14PM 21 LEVEL COMMAND CALLED SHARE, NOW CUSTOMERS USED TO TYPING JUST

01:14PM 22 SH WOULD NOW GET AN ERROR SAYING WELL, I DON'T KNOW WHETHER YOU

01:14PM 23 MEAN SHOW OR SHARE.

01:14PM 24 THOSE ARE WHAT WE WOULD CALL COLLISIONS IN THE PARSER,

01:14PM 25 MEANING IT'S A POINT WHERE THE COMMAND CAN BE CONFUSED WITH

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:14PM 1 ANOTHER COMMAND BECAUSE THE LETTERS OVERLAP.

01:14PM 2 SO THIS WAS SOMETHING TO AVOID.

01:14PM 3 Q. SO HOW WOULD THAT GO INTO THE COMMAND CREATION ITSELF, THAT  
01:15PM 4 CONCEPT?

01:15PM 5 A. THIS WOULD BE PART OF THE ENGINEER EXERCISING THEIR  
01:15PM 6 JUDGMENT AND UNDERSTANDING THINKING ABOUT BOTH EXTENSIBILITY  
01:15PM 7 AND BACKWARDS COMPATIBILITY WITH THE EXISTING COMMANDS IN THE  
01:15PM 8 DEVICE.

01:15PM 9 Q. DO YOU KNOW WHETHER THERE ARE ANY COLLISIONS IN THE CISCO  
01:15PM 10 CLI?

01:15PM 11 A. THERE ARE PROBABLY SOME BECAUSE IT'S -- THERE'S NO --  
01:15PM 12 THERE'S NOBODY EXPLICITLY STOPPING -- THERE'S NOBODY THAT CAN  
01:15PM 13 STOP AN ENGINEER FROM DOING THAT.

01:15PM 14 Q. NOW I WANT TO MOVE ON TO ANOTHER ONE IN YOUR LIST, THE  
01:15PM 15 NUMBER SIX. DO YOU SEE THAT?

01:15PM 16 A. YES.

01:15PM 17 Q. CAN YOU TELL US WHAT YOU ARE TALKING ABOUT HERE.

01:15PM 18 A. SO THE IDEA IS, AS A GUIDELINE, THE ENGINEER WHEN THEY ARE  
01:16PM 19 CREATING A COMMAND, HAVE TO PICK WHERE THEY ARE IN THE  
01:16PM 20 HIERARCHY, THINK EXTENSIBLY, AVOID COLLISIONS, BUT THEY ALSO  
01:16PM 21 NEED TO THINK ABOUT WHAT WORD THEY CHOOSE. AND THAT COULD BE A  
01:16PM 22 MATTER OF SOME DEBATE.

01:16PM 23 AND THE ENCOURAGEMENT HERE WAS TO, WHEN PICKING WORDS, WHEN  
01:16PM 24 IT MADE SENSE, THEY SHOULD PICK SOMETHING THAT THE INDUSTRY  
01:16PM 25 WOULD RECOGNIZE.

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:16PM 1 FOR EXAMPLE, THERE'S A CONCEPT CALLED MAXIMUM TRANSMISSION  
01:16PM 2 UNIT WHICH IS THE LARGEST SIZE PACKET YOU CAN SEND. SO THE  
01:16PM 3 PROPER NAME IS MAXIMUM TRANSMISSION UNIT SO THAT COULD BE A  
01:16PM 4 WORD, BUT SINCE MTU IS A RECOGNIZED ABBREVIATION, WE SUGGEST IF  
01:16PM 5 YOU CAN PICK SOMETHING THAT'S RECOGNIZED, THAT WOULD BE BETTER  
01:16PM 6 THAN PICKING SOMETHING THAT'S HARDER TO RECOGNIZE.

01:16PM 7 Q. NOW IN YOUR ANSWER, YOU SAID THAT THE CHOICE, EVEN IN THIS  
01:16PM 8 CONTEXT IS SOMEWHAT OPEN TO DEBATE. CAN YOU TELL ME WHAT YOU  
01:17PM 9 MEAN BY THAT?

01:17PM 10 A. THE ENGINEER COULD -- IN THAT CASE THEY COULD PICK EITHER  
01:17PM 11 ONE. THEY COULD PICK A DIFFERENT WORD IF THEY THINK THAT  
01:17PM 12 THEY'VE GOT A NEW CONCEPT OR THEY'VE GOT A DIFFERENT AUDIENCE  
01:17PM 13 THAT WOULDN'T USE THAT LANGUAGE.

01:17PM 14 THERE ARE SITUATIONS WHERE CISCO'S CREATED TERMINOLOGY AND  
01:17PM 15 INTRODUCED IT TO THE CLI WHEN THERE WASN'T SOMETHING IN THE  
01:17PM 16 INDUSTRY THAT MADE SENSE.

01:17PM 17 Q. NOW EVEN IN THE CONTEXT, YOU USED THE MAXIMUM TRANSMISSION  
01:17PM 18 CONTEXT?

01:17PM 19 A. YES.

01:17PM 20 Q. I WANT TO GO BACK TO YOUR DISCUSSION JUST A MINUTE AGO  
01:17PM 21 ABOUT THE HIERARCHY IN THE WORD SEQUENCE?

01:17PM 22 A. YES.

01:17PM 23 Q. COULD YOU CREATE A MAXIMUM OR MTU HIERARCHY?

01:17PM 24 A. IN FACT, BACK WHEN CISCO ONLY SUPPORTED THE IP PROTOCOL,  
01:17PM 25 THE PARENT COMMAND WAS MTU IN THE EARLY DAYS, THE COMMAND MTU

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:17PM 1 IS IN FACT A PARENT-LEVEL COMMAND. BUT WHEN WE STARTED  
01:18PM 2 INTRODUCING NEW PROTOCOLS, IPV6, IPX, APPLE TALK, WE REALIZED  
01:18PM 3 THE MTU MIGHT BE DIFFERENT FOR THEM.

01:18PM 4 SO IN FACT, WE GOT RID OF MTU AS A TOP LEVEL KEY WORD AND  
01:18PM 5 INSTEAD USED A NEW TOP LEVEL KEY WORD FOR THE PROTOCOL, IP OR  
01:18PM 6 IPV6, AND THEN MADE MTU IN THAT CASE, THE CHILD OF THAT  
01:18PM 7 COMMAND.

01:18PM 8 SO IN FACT, YES, THERE ARE CASES WHERE YOU NEED TO DECIDE  
01:18PM 9 AS AN ENGINEER IF IT MAKES SENSE TO ADD A NEW NODE INTO THE  
01:18PM 10 HIERARCHY, IT'S NOT JUST A MATTER OF PICKING THE WORDS BUT  
01:18PM 11 PICKING THE LOGICAL PLACE TO PLACE THE WORDS IN THE HIERARCHY  
01:18PM 12 Q. SO THEN THE NEXT ONE DOWN, NUMBER SEVEN. FIRST SENTENCE  
01:18PM 13 THERE IS DO NOT USE CODE NAMES IN COMMANDS; DO YOU SEE THAT?

01:18PM 14 A. YES.

01:18PM 15 Q. AND WHAT ARE YOU REFERRING TO THERE?

01:18PM 16 A. SOMETIMES WHEN DEVELOPING PRODUCTS AT CISCO, WE MAY HAVE  
01:19PM 17 INTERNAL CODE NAMES FOR HARDWARE OR PROTOCOL.

01:19PM 18 AND BEFORE WE'VE DECIDED WHAT WE ARE GOING TO CALL THEM TO  
01:19PM 19 THE PUBLIC, WE WOULD USE SOME OF THOSE INTERNAL CODE NAMES,  
01:19PM 20 SOMETIMES THE CODE WOULD HAVE TO BE WRITTEN BEFORE THE PROPER  
01:19PM 21 NAME WAS DECIDED. SO SOMETIMES THE CODE NAMES WOULD BE IN THE  
01:19PM 22 USER INTERFACE.

01:19PM 23 AND THIS WAS A REMINDER TO ENGINEERS, IF YOU USED A CODE  
01:19PM 24 NAME, GO BACK AND MAKE SURE IT'S CHANGED TO SOMETHING OTHER  
01:19PM 25 THAN A CODE NAME BEFORE IT GETS TO CUSTOMERS.

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:19PM 1 Q. SO NOW I WANT TO GO TO THE LAST ONE ON YOUR LIST, NUMBER  
01:19PM 2 TEN. IT SAYS COMMAND SHOULD TEND TO BE SELF EXPLANATORY SO  
01:19PM 3 THAT A RELATIVELY KNOWLEDGEABLE USER CAN FIGURE OUT THE COMMAND  
01:19PM 4 FUNCTION FROM THE MANUALS -- NO, I SKIPPED A LINE, SORRY. THE  
01:19PM 5 COMMAND FUNCTION FROM THE COMMAND AND ONLINE HELP WITHOUT  
01:20PM 6 HAVING IT SCURRY OFF TO THE MANUALS; DO YOU SEE THAT?

01:20PM 7 A. RIGHT.

01:20PM 8 Q. CAN YOU TELL ME WHAT YOU MEANT THERE?

01:20PM 9 A. SO PART OF THIS IS ABOUT, YOU KNOW, CHOOSING THE HIERARCHY,  
01:20PM 10 GROUPING STUFF TOGETHER, EXERCISING JUDGMENT AND CREATIVITY,  
01:20PM 11 AND ARRANGING LIKE CONCEPTS TOGETHER.

01:20PM 12 SO THE IDEA IS THAT LOOKING AT A COMMAND, YOU SHOULD BE  
01:20PM 13 ABLE TO, BASED ON YOUR KNOWLEDGE OF THE DESIGN AESTHETIC, THE  
01:20PM 14 HIERARCHY AND THE TYPICAL SEQUENCE AND ORGANIZATION OF COMMANDS  
01:20PM 15 USED BY CISCO, THAT THE CUSTOMER COULD LOOK AT THAT COMMAND AND  
01:20PM 16 FIGURE OUT BASED ON THEIR EXPERIENCE IN USING COMMANDS LIKE IT,  
01:20PM 17 WHAT THAT COMMAND SHOULD DO. IT'S A PRINCIPLE OF CONSISTENCY  
01:20PM 18 AND USABILITY

01:20PM 19 Q. SO THEN I WANT TO LOOK AT THE NEXT SENTENCE THERE. IT  
01:20PM 20 SAYS, WHAT CONSTITUTES SELF EXPLANATORY WILL VARY BY YOUR  
01:20PM 21 TARGET AUDIENCE, SO BE PREPARED TO DEFEND THAT POINT; DO YOU  
01:20PM 22 SEE THAT?

01:21PM 23 A. I DO.

01:21PM 24 Q. WHAT'S THAT REFERRING TO IN THE GUIDELINES?

01:21PM 25 A. SO THE IDEA IS THAT, AGAIN, WE WANT TO HAVE THE COMMAND



DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:33PM 1 Q. AND THE GROUP THAT YOU ARE TALKING ABOUT, WHAT GROUP IS  
01:33PM 2 THAT?

01:33PM 3 A. THAT IS -- THAT WAS MYSELF AND MY FELLOW DESIGNER, SOLOMON  
01:33PM 4 THE PEOPLE IN THE -- SOME FOLKS IN THE TECHNICAL SUPPORT GROUP  
01:33PM 5 WHO WOULD HAVE TO SUPPORT THIS AND SOME FOLKS IN THE  
01:33PM 6 DEVELOPMENT GROUP THAT WOULD BE DOING SOME OF THE CODING WORK.

01:33PM 7 Q. NOW I WANT TO CHANGE GEARS A LITTLE BIT AND IF WE GO TO  
01:33PM 8 SLIDE SEVEN, I WANT TO TALK ABOUT THE SHOW INVENTORY OUTPUT,  
01:33PM 9 OKAY?

01:33PM 10 A. YES.

01:33PM 11 Q. FIRST TELL US WHAT THE SHOW INVENTORY OUTPUT WOULD BE?

01:33PM 12 A. SO IN ADDITION TO WRITING THE SPECIFICATION FOR THE SHOW  
01:34PM 13 INVENTORY COMMAND, WE ALSO WROTE THE SPECIFICATION FOR THE  
01:34PM 14 OUTPUT AND WE WROTE THE HELP TEXT.

01:34PM 15 SO WHEN YOU TYPE THE COMMAND SHOW INVENTORY, IT PRODUCES  
01:34PM 16 SOME TEXT OUTPUT SHOWING YOU THE INVENTORY OF THE BOX. AND WE  
01:34PM 17 HAD TO DESIGN THAT.

01:34PM 18 Q. AND WHY IS THAT?

01:34PM 19 A. THAT'S JUST WHAT WE DO. THERE'S -- IT'S THE -- THE  
01:34PM 20 INFORMATION THAT WE KNOW THAT WE NEED TO SHOW, THE DEVICE NAME,  
01:34PM 21 THE PART NUMBER, THE VERSION NUMBER, THE SERIAL NUMBER, HAD TO  
01:34PM 22 BE DISPLAYED TO THE CUSTOMER IN A WAY THAT WAS EASY TO READ,  
01:34PM 23 EASY TO UNDERSTAND AND EASY TO PROCESS.

01:34PM 24 Q. SO DID YOU CREATE THE OUTPUT FOR THE SHOW INVENTORY  
01:34PM 25 COMMAND?

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:34PM 1 A. OUR TEAM DEVELOPED THE OUTPUT FOR THE SHOW INVENTORY  
01:34PM 2 COMMAND.

01:34PM 3 Q. AND DO YOU RECALL WHETHER THERE WERE RESTRICTIONS ON WHAT  
01:34PM 4 THAT OUTPUT COULD BE?

01:34PM 5 A. THERE WERE NO RESTRICTIONS. WE HAD TOTAL FREEDOM IN HOW WE  
01:35PM 6 MADE THE OUTPUT LOOK.

01:35PM 7 Q. SO HOW IS IT THAT YOU MADE THE DECISION ON WHAT THAT OUTPUT  
01:35PM 8 SHOULD BE?

01:35PM 9 A. WE WENT THROUGH A COUPLE OF THINGS. WE WOULD HAVE LIKED TO  
01:35PM 10 HAVE EACH PART TO FIT ON A SINGLE LINE, BUT WE THOUGHT THAT  
01:35PM 11 WOULD BE HARD TO READ IF IT WENT OVER 80 COLUMNS, SO WE  
01:35PM 12 ACTUALLY MADE EVERY ITEM APPEAR ON THE TWO LINES. WITH THE  
01:35PM 13 FIRST LINE BEING THE NAME AND THE DEVICE AND THE DESCRIPTION  
01:35PM 14 AND THE SECOND LINE BEING THE IMPORTANT INFORMATION, THE  
01:35PM 15 VERSION AND THE SERIAL NUMBER.

01:35PM 16 THEN WE WOULD REPEAT THAT FOR EVERY DEVICE INCLUDED.

01:35PM 17 WE ALSO INCLUDED ALL OF THE TEXT IN QUOTES AND SEPARATED  
01:35PM 18 THINGS WITH COLONS SO THAT IF PEOPLE WANTED TO PROCESS IT  
01:35PM 19 AUTOMATICALLY WITH A PROGRAM OR A SCRIPT THEY WOULD EASILY BE  
01:35PM 20 ABLE TO FIND THE EDGES OF EACH FIELD, THEY COULD SEPARATE EACH  
01:35PM 21 INFORMATION FIELD EASILY.

01:35PM 22 Q. OKAY. SO YOU SAID SOMETHING THERE, PROCESS AUTOMATICALLY  
01:36PM 23 WITH A SCRIPT?

01:36PM 24 A. YES.

01:36PM 25 Q. CAN YOU EXPLAIN TO US WHAT THAT IS?

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:36PM 1 A. SO ALTHOUGH SOME PEOPLE USE THE DEVICE BY SITTING ON A KEY  
01:36PM 2 BOARD AND TYPING, TYPING INDIVIDUAL COMMANDS AND READING THE  
01:36PM 3 OUTPUT, SOMETIMES THEY PROGRAM A COMPUTER TO CONNECT FOR THEM  
01:36PM 4 ISSUE THE COMMANDS, READ THE OUTPUT, AND THEN EXTRACT THE  
01:36PM 5 INFORMATION FROM THE OUTPUT. THAT'S A WAY OF AUTOMATING THE  
01:36PM 6 PROCESS.

01:36PM 7 SO RATHER THAN HAVING TO LOG IN AND TYPE AND TYPE AND TYPE,  
01:36PM 8 SOME NETWORK ADMINISTRATORS WILL WRITE A PROGRAM, A SCRIPT  
01:36PM 9 WHICH WILL THEN GO AND PERFORM A BUNCH OF FUNCTIONS, SEND  
01:36PM 10 COMMANDS AND THEN INTERPRET THE OUTPUT.

01:36PM 11 Q. SO WOULD THAT TYPE OF PROGRAM, THAT AUTOMATION YOU  
01:36PM 12 DESCRIBED STILL USE THE CLI?

01:36PM 13 A. YES, THE CLI IS ONE OF THE WAYS THAT AN AUTOMATION PROGRAM  
01:36PM 14 WOULD ACCESS A CISCO DEVICE.

01:36PM 15 Q. NOW I WANT TO MOVE ON A LITTLE BIT. WE WILL GO TO SLIDE 8  
01:37PM 16 HERE AND TALK ABOUT THE SHOW INVENTORY HELP DESCRIPTION.

01:37PM 17 DO YOU SEE THAT?

01:37PM 18 A. YES.

01:37PM 19 Q. AT THE TIME YOU WERE CREATING THE SHOW INVENTORY COMMAND  
01:37PM 20 WAS THERE ALSO A HELP DESCRIPTION CREATED?

01:37PM 21 A. YES, WE CREATED HELP DESCRIPTION AT THE TIME WE CREATED THE  
01:37PM 22 COMMAND.

01:37PM 23 Q. AND WHAT WAS THAT HELP DESCRIPTION?

01:37PM 24 A. SO, AT THE COMMAND LINE, BECAUSE THERE ARE DOZENS OF  
01:37PM 25 POSSIBLE SHOW COMMANDS, IT'S NOT REASONABLE TO EXPECT SOMEBODY

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:37PM 1 TO MEMORIZE ALL OF THE COMMANDS. SO WE HAVE ONLINE HELP.

01:37PM 2 IF YOU TYPE QUESTION MARK AFTER A COMMAND, IT WILL SHOW YOU

01:37PM 3 ALL THE POSSIBLE CHILD COMMANDS THAT ARE ALLOWED AT THAT

01:37PM 4 PROMPT, INCLUDING THE INVENTORY COMMAND.

01:37PM 5 Q. AND THEN IN TERMS OF THE DESCRIPTION FOR THE INVENTORY

01:37PM 6 COMMAND ITSELF?

01:37PM 7 A. YES.

01:37PM 8 Q. WHAT WOULD THAT BE?

01:37PM 9 A. SO FOR EACH COMMAND THERE'S A BRIEF EXPLANATION, A BRIEF

01:37PM 10 SHORT HELP STRING, A HELP TEXT THAT TELLS PEOPLE WHAT TO DO.

01:38PM 11 WE WROTE THE HELP TEXT TO DESCRIBE WHAT THE SHOW INVENTORY

01:38PM 12 COMMAND DID. AND SPECIFICALLY WE SAID IT WAS TO SHOW THE

01:38PM 13 PHYSICAL INVENTORY OF THE BOX. THAT'S THE PARTS INSIDE THE

01:38PM 14 BOX.

01:38PM 15 Q. AND PHYSICAL INVENTORY IS TO DISTINGUISH IT FROM WHAT?

01:38PM 16 A. WELL, YOU MIGHT GET AN INVENTORY OF SOFTWARE LICENSES IN

01:38PM 17 THE BOX OR YOU MIGHT GET AN INVENTORY OF SOFTWARE MODULES ON

01:38PM 18 THE BOX. WE WANTED TO MAKE IT CLEAR WE WERE TALKING ABOUT

01:38PM 19 PHYSICAL THINGS THAT WERE, THAT WE ARE TAKING INVENTORY OF,

01:38PM 20 PHYSICAL HARDWARE.

01:38PM 21 Q. SO WHEN YOU WERE DEVELOPING THE HELP DESCRIPTION, WERE YOU

01:38PM 22 CONSTRAINED?

01:38PM 23 A. WE HAD NO CONSTRAINTS. THE AESTHETIC WAS TO KEEP IT SHORT,

01:38PM 24 BUT THERE ARE NO OFFICIAL CONSTRAINTS THAT I'M AWARE OF FOR THE

01:38PM 25 HELP TEXT ITSELF.

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:38PM 1 Q. SO YOU SAID THAT WORD A FEW TIMES, AESTHETIC, CAN YOU  
01:39PM 2 EXPLAIN TO US WHAT YOU MEAN IN THE CONTEXT OF CLI, THE  
01:39PM 3 AESTHETIC?

01:39PM 4 A. THE AESTHETIC IS THE WAY THE CLI IS ORGANIZED, THE WAY YOU  
01:39PM 5 EXPECT, IF YOU LOOK AT THE WAY THIS TABLE OF HELP IS ORGANIZED,  
01:39PM 6 YOU KNOW, HAVING STUFF TABBED OUT, HAVING EVERYTHING FIT  
01:39PM 7 CLEANLY ON THE SCREEN, HAVING THE HIERARCHY, HAVING THE HELP,  
01:39PM 8 HAVING THIS ALL FEEL OF THE INTERFACE, THAT'S PART OF WHAT I  
01:39PM 9 WOULD CONSIDER THE AESTHETIC.

01:39PM 10 Q. DOES THAT HAVING ANYTHING TO DO WITH THE CONSISTENCY THAT  
01:39PM 11 YOU TALKED ABOUT EARLIER?

01:39PM 12 A. I DON'T THINK IT DOES DIRECTLY. CONSISTENCY IS PART OF THE  
01:39PM 13 AESTHETIC, I SUPPOSE, BUT I DON'T KNOW HOW I WOULD LINK THEM.

01:39PM 14 Q. OKAY. NOW I WANT TO GO TO ANOTHER TOPIC.

01:39PM 15 SO WE TALKED ABOUT EARLIER, I THINK IT WAS BEFORE LUNCH.  
01:39PM 16 YOU HAVE BEEN IN THE SERVICE DIVISION FOR ABOUT 20 YEARS OR SO;  
01:39PM 17 IS THAT RIGHT?

01:39PM 18 A. IT WILL BE 25 YEARS IN JANUARY.

01:39PM 19 Q. OKAY. 25 YEARS. SO IN CONNECTION WITH YOUR WORK, HAVE YOU  
01:40PM 20 GAINED AN UNDERSTANDING OF HOW CUSTOMERS USE THE CISCO CLI?

01:40PM 21 A. I HAVE.

01:40PM 22 Q. AND WHAT HAVE YOU LEARNED?

01:40PM 23 A. WELL, I'VE LEARNED THAT THEY LIKE IT. IT CAN BE DIFFICULT  
01:40PM 24 TO USE, BUT THEY LIKE IT BECAUSE IT'S VERY COMPACT AND POWERFUL  
01:40PM 25 AND PUTS A LOT OF THE FUNCTIONS AT THEIR FINGER TIPS TO DO

DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:45PM 1

FAULT.

01:45PM 2

ARE YOU THERE?

01:45PM 3

A. I AM.

01:45PM 4

Q. SO WHAT IS 2685?

01:45PM 5

A. SO 2685 IS ONE OF MANY DOCUMENTS THAT CISCO PRODUCES TO

01:45PM 6

HELP CUSTOMERS TROUBLE SHOOT THEIR NETWORKS.

01:45PM 7

Q. IT SAYS IOS XR, COULD YOU EXPLAIN TO US WHAT IOS XR IS?

01:45PM 8

A. IOS XR IS A VARIANT OF THE IOS INTERNETWORK OPERATING

01:45PM 9

SYSTEM THAT RUNS ON PRODUCTS USED IN THE SERVICE PROVIDER

01:45PM 10

MARKET.

01:45PM 11

Q. NOW, ARE THERE COMMANDS THAT YOU THINK ARE PARTICULARLY

01:46PM 12

IMPORTANT TO TROUBLE SHOOTING?

01:46PM 13

A. THERE ARE.

01:46PM 14

Q. AND WHAT KINDS OF COMMANDS WOULD THOSE BE, IF YOU COULD

01:46PM 15

GIVE US SOME EXAMPLES?

01:46PM 16

A. SOME OF THEM COULD INCLUDE COMMANDS LIKE SHOW ARP, TO DIG

01:46PM 17

THROUGH THE ARP TABLE. SHOW INTERFACE WILL GIVE YOU

01:46PM 18

INFORMATION ABOUT INTERFACE COMMANDS. SHOW VERSION ABOUT THE

01:46PM 19

SOFTWARE VERSION THAT YOU ARE USING. AND A NUMBER OF SIMILAR

01:46PM 20

COMMANDS LIKE THAT.

01:46PM 21

Q. OKAY. AND WHY ARE THOSE KINDS OF THINGS PARTICULARLY

01:46PM 22

IMPORTANT TO TROUBLE SHOOTING?

01:46PM 23

A. THESE ARE -- THESE ARE GIVING CUSTOMERS INSIGHT INTO THINGS

01:46PM 24

THAT ARE GOING ON INSIDE THE DEVICE, AND WITH OTHER DEVICES,

01:46PM 25

OTHER COMPUTERS ON THE NETWORK SURROUNDING THE ROUTER OR

CROSS-EXAMINATION OF MR. REMAKER BY MR. FERRALL

01:51PM 1 COMMAND THAT YOU DESCRIBED ON DIRECT.

01:51PM 2 I THINK -- WELL, FIRST, LET ME START, YOU UNDERSTAND IN  
01:52PM 3 THIS CASE CISCO IS NOT ASSERTING A CLAIM OVER THE FUNCTION OF  
01:52PM 4 THAT COMMAND, RIGHT?

01:52PM 5 A. I'M -- I'M NOT EXACTLY FAMILIAR WITH ALL OF THE LEGAL  
01:52PM 6 TERMS.

01:52PM 7 Q. OKAY. WELL, LET'S FOCUS ON THE COMMAND WORDS THEMSELVES  
01:52PM 8 THEN.

01:52PM 9 AND I THINK IT'S YOUR TESTIMONY THAT AT THE TIME THAT YOU  
01:52PM 10 CAME UP WITH THE SHOW INVENTORY COMMAND, THE WORD "SHOW" HAD  
01:52PM 11 BEEN USED A LOT ALREADY AT CISCO, RIGHT?

01:52PM 12 A. YES.

01:52PM 13 Q. AND SO YOU DIDN'T CONSIDER ANY OTHER WORD OTHER THAN SHOW,  
01:52PM 14 TO BEGIN THE COMMAND FOR THE SHOW INVENTORY FUNCTION, RIGHT?

01:52PM 15 A. I DIDN'T.

01:52PM 16 Q. AND THAT'S BECAUSE YOU KNEW THAT THIS COMMAND WAS GOING TO  
01:52PM 17 GENERATE AN OUTPUT ON THE SCREEN, RIGHT, YES?

01:53PM 18 A. YES.

01:53PM 19 Q. SORRY, WE JUST NEED AUDIBLE ANSWERS HERE. AND FOR  
01:53PM 20 FUNCTIONS THAT GENERATE AN OUTCOME ON THE SCREEN, IT'S ALWAYS  
01:53PM 21 BEEN THE PRACTICE OF CISCO TO USE THE WORD SHOW?

01:53PM 22 A. IT'S A COMMON PRACTICE.

01:53PM 23 Q. SO THE EFFORT THAT YOU AND YOUR COLLEAGUES WENT THROUGH ON  
01:53PM 24 THIS COMMAND WAS ALL ABOUT DETERMINING WHAT THE SECOND WORD  
01:53PM 25 WOULD BE FOLLOWING SHOW, RIGHT?

CROSS-EXAMINATION OF MR. REMAKER BY MR. FERRALL

01:58PM 1 DO YOU RECOGNIZE THIS, MR. REMAKER, AS AN E-MAIL FROM YOU  
01:58PM 2 IN WHICH YOU'RE ATTACHING A VERSION OF THE PARSER-POLICE  
01:58PM 3 MANIFESTO?

01:58PM 4 A. YES.

01:58PM 5 MR. FERRALL: YOUR HONOR, I WOULD OFFER EXHIBIT 5175  
01:58PM 6 INTO EVIDENCE.

01:58PM 7 THE COURT: ANY OBJECTION?

01:58PM 8 MR. NELSON: NO OBJECTION, YOUR HONOR.

01:58PM 9 THE COURT: IT WILL BE ADMITTED.

01:58PM 10 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 5175, HAVING BEEN  
01:58PM 11 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO  
01:58PM 12 EVIDENCE.)

01:58PM 13 BY MR. FERRALL:

01:58PM 14 Q. AND I THINK THIS IS JUST A DIFFERENT VERSION OF WHAT YOU  
01:58PM 15 TESTIFIED ON DIRECT; IS THAT RIGHT?

01:58PM 16 A. YES.

01:58PM 17 Q. OKAY. AND THE PURPOSE OF THE MANIFESTO AS STATED HERE, IS  
01:58PM 18 TO ENSURE CONSISTENCY, USABILITY AND FRIENDLINESS OF THE  
01:58PM 19 CONFIGURATION INTERFACE, RIGHT?

01:58PM 20 A. YES.

01:58PM 21 Q. AND THE REASON TO ENSURE CONSISTENCY OF THE INTERFACE IS  
01:59PM 22 BECAUSE CUSTOMERS EXPECT CONSISTENCY, RIGHT?

01:59PM 23 A. CISCO'S CUSTOMERS EXPECT THAT, YES.

01:59PM 24 Q. OKAY. AND COUNSEL WALKED THROUGH WITH YOU A NUMBER OF  
01:59PM 25 THESE GUIDELINES, AND I JUST WANT TO TOUCH UPON A COUPLE OF



REDIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

02:29PM 1 ACTUALLY STRIKE THAT. DO YOU THINK THAT CISCO'S CLI IS JUST  
02:29PM 2 FREE FOR EVERYBODY TO USE?

02:29PM 3 A. I DON'T. IT'S A COPYRIGHTED PRODUCT OF CISCO'S.

02:29PM 4 Q. AND HAVE YOU EVER HEARD ANYBODY AT CISCO SAY HEY, IT'S FREE  
02:30PM 5 FOR EVERYBODY TO USE?

02:30PM 6 A. I'VE NEVER HEARD THAT.

02:30PM 7 Q. DID ANYONE FROM ARISTA CALL YOU UP AND ASK WHETHER THIS WAS  
02:30PM 8 FREE FOR THEM TO USE?

02:30PM 9 A. NOBODY CALLED ME.

02:30PM 10 Q. ARE YOU AWARE OF WHETHER THEY EVER CALLED ANYBODY AT CISCO  
02:30PM 11 AND SAID HEY, IS THIS FREE FOR US TO USE?

02:30PM 12 A. I'M NOT AWARE OF ANYTHING LIKE THAT.

02:30PM 13 Q. ARE YOU AWARE OF WHETHER ANYBODY AT ARISTA SAID, DO YOU  
02:30PM 14 THINK IT WOULD BE GOOD FOR YOUR CUSTOMERS IF I COPIED THE CLI?

02:30PM 15 A. I DON'T RECALL ANYTHING LIKE THAT.

02:30PM 16 Q. DID YOU EVER HEAR ANYBODY FROM ARISTA -- HEAR ABOUT ANYBODY  
02:30PM 17 FROM ARISTA ASKING CISCO THAT?

02:30PM 18 A. I HAVEN'T HEARD THAT.

02:30PM 19 Q. NOW, I WANT TO GO TO A COUPLE OF THE EXHIBITS THAT YOU WERE  
02:30PM 20 ASKED ABOUT. EXHIBIT 5168.

02:31PM 21 SO I BELIEVE THIS WAS REPRESENTED TO BE THE CONSULTANT  
02:31PM 22 SUMMARY OF THE INNOVATION SURVEY; IS THAT RIGHT?

02:31PM 23 A. YES.

02:31PM 24 Q. OKAY. SO YOU WERE ASKED A FEW QUESTIONS, BUT I WANT TO  
02:31PM 25 LOOK AT PAGE 20.

DIRECT EXAMINATION OF MR. SLATTERY BY MR. PAK

03:03PM 1 COMPATIBLE, YOU WERE TALKING ABOUT BEING BACKWARD COMPATIBLE  
03:03PM 2 WITH CISCO PRODUCTS; IS THAT CORRECT?

03:03PM 3 A. CORRECT. JUST THEIR COMMAND LANGUAGE. SO THE SYNTAX HAD  
03:03PM 4 TO BE EXACTLY THE SAME, CHANGE NO COMMANDS.

03:03PM 5 Q. DID THEY TELL YOU ANYTHING ABOUT WHAT YOU COULD DO WITH THE  
03:03PM 6 CODE THAT IMPLEMENTED THE PARSER?

03:03PM 7 A. NO, THERE WAS NO DIRECTION, JUST MAKE IT SO THAT IT'S  
03:03PM 8 PORTABLE SO WE CAN MOVE IT.

03:04PM 9 Q. AND DID YOU FOLLOW THAT GUIDANCE FROM CISCO, DID YOU CHANGE  
03:04PM 10 ANY OF THE COMMANDS?

03:04PM 11 A. WE DID NOT CHANGE ANY OF THE COMMANDS, NO. WE FOLLOWED IT.

03:04PM 12 Q. DID YOU END UP ADDING ANY FUNCTIONALITY TO THE USER  
03:04PM 13 INTERFACE?

03:04PM 14 A. YES, WE DID.

03:04PM 15 IN THE COURSE OF GOING THROUGH AND WRITING THE STUFF,  
03:04PM 16 MYSELF AND THE OTHER MEMBERS OF MY TEAM THAT WERE BETWEEN 2 AND  
03:04PM 17 4 OF US AT DIFFERENT POINTS IN TIME WORKING ON THIS, OVER THE  
03:04PM 18 COURSE OF 18 MONTHS.

03:04PM 19 WE SPENT -- WE HAD SPENT TIME WORKING ON OTHER OPERATING  
03:04PM 20 SYSTEMS THAT PROVIDED SOME LITTLE LEVEL OF HELP, SO YOU COULD  
03:04PM 21 ASK THE SYSTEM, CAN YOU DESCRIBE A COMMAND TO ME. AND LET ME  
03:04PM 22 KNOW WHAT ALL THE WORDS ARE THAT I NEEDED TO TYPE IN FOR A  
03:04PM 23 SPECIFIC COMMAND.

03:04PM 24 AND THAT WAS NOT AVAILABLE IN THE CISCO PARSER AT THE TIME  
03:04PM 25 WE STARTED THE PROJECT.

DIRECT EXAMINATION OF MR. SLATTERY BY MR. PAK

03:10PM 1 AND CAN YOU EXPLAIN WHAT YOU WERE DESCRIBING HERE WITH THE  
03:10PM 2 SECTION TITLED COMMAND SYNTAX HELP?

03:10PM 3 A. THIS IS SIMILAR TO THE DESCRIPTION I JUST GAVE, WHEN YOU  
03:10PM 4 ARE TYPING A COMMAND IN, AT ANY POINT YOU CAN HIT QUESTION  
03:10PM 5 MARK, AND IT WILL PROVIDE HELP FOR YOU INDICATING WHAT COMMANDS  
03:10PM 6 OR WHAT WORDS ARE POSSIBLE IN A COMMAND AT THAT POINT.

03:10PM 7 Q. AND THEN LET'S TAKE A LOOK AT THE EXAMPLES THAT ARE GIVEN  
03:10PM 8 AT THE BOTTOM STARTING WITH EXAMPLE ONE. IT'S A LITTLE BIT  
03:10PM 9 HARD TO READ, BUT MAYBE YOU CAN DESCRIBE WHAT WE ARE SEEING  
03:10PM 10 HERE TO THE JURY.

03:10PM 11 A. YES. SO THIS IS AN EXAMPLE OF SOMEONE WORKING THROUGH  
03:10PM 12 INPUTTING A COMMAND, THE COMMAND APPEARS DOWN AT THE BOTTOM.  
03:11PM 13 BUFFERS, SMALL, PERMANENT, 200.

03:11PM 14 IN THE OLD INTERFACE, YOU WOULD HAVE TO REMEMBER ALL OF  
03:11PM 15 THOSE WORDS AND TYPE THEM IN EXACTLY. WITH THE NEW INTERFACE,  
03:11PM 16 YOU WOULD TYPE IN BUFFERS, AND THEN QUESTION MARK. AND IT  
03:11PM 17 SHOWS THAT YOU COULD DO BIG, HUGE, LARGE, MIDDLE, AND SMALL  
03:11PM 18 BUFFERS.

03:11PM 19 SO THERE ARE DIFFERENT SIZES OF BUFFERS YOU CAN CONFIGURE.  
03:11PM 20 AND THEN WE SELECTED SMALL, THEN HIT QUESTION MARK AGAIN. AND  
03:11PM 21 WE COULD SEE INITIAL BUFFERS, THEN THE HELP TEXT BESIDE THAT,  
03:11PM 22 TEMPORARY BUFFERS, ALLOCATED AT SYSTEM RELOAD.

03:11PM 23 SO THAT WAS THE HELP THAT WE CREATED. THE HELP TEXT. AND  
03:11PM 24 THAT WAS NEW FUNCTIONALITY THAT PREVIOUSLY DID NOT EXIST.

03:11PM 25 Q. LET'S LOOK AT ONE MORE EXAMPLE WHICH IS I BELIEVE ON

REDIRECT EXAMINATION OF MR. SLATTERY BY MR. PAK

03:37PM 1 Q. AND WHEN YOU SAID IT, THAT YOU BELIEVED IT?

03:37PM 2 A. YES.

03:37PM 3 Q. AND YOU BELIEVE IT TODAY?

03:37PM 4 A. UH-HUH.

03:38PM 5 MR. KWUN: NO FURTHER QUESTIONS, YOUR HONOR.

03:38PM 6 THE COURT: REDIRECT FOR THIS WITNESS, MR. PAK?

03:38PM 7 MR. PAK: JUST QUICK FOLLOW UP.

03:38PM 8 THE COURT: OKAY.

03:38PM 9

03:38PM 10 **REDIRECT EXAMINATION BY MR. PAK**

03:38PM 11

03:38PM 12 BY MR. PAK:

03:38PM 13 Q. SO LET ME MAKE IT CLEAR, YOU WOULDN'T START A COMPANY THAT  
03:38PM 14 WOULD USE CISCO'S USER INTERFACE WITHOUT GETTING A LICENSE FROM  
03:38PM 15 CISCO, RIGHT?

03:38PM 16 A. THAT IS CORRECT.

03:38PM 17 Q. OKAY. AND WHEN YOU TALK ABOUT EMULATION, MR. KWUN SHOWED  
03:38PM 18 YOU SOME OF THOSE SAME DOCUMENTS WE TALKED ABOUT, WERE YOU  
03:38PM 19 SAYING, SIR, THAT EMULATING MEANS COPYING THE COMMAND ELEMENTS  
03:38PM 20 FROM CISCO'S USER INTERFACE?

03:38PM 21 A. NO.

03:38PM 22 Q. AND YOU TALKED ABOUT MULTI VENDOR NETWORKS IN YOUR  
03:38PM 23 TESTIMONY; DO YOU RECALL THAT?

03:38PM 24 A. YES.

03:38PM 25 Q. SO IF YOU WERE TO BE WORKING WITH MULTIPLE EQUIPMENT THAT

REDIRECT EXAMINATION OF MR. SLATTERY BY MR. PAK

03:38PM 1 HAD DIFFERENT USER INTERFACES, HOW WOULD YOU LEARN HOW TO WORK  
03:38PM 2 WITH DIFFERENT USER INTERFACES THAT DID NOT LOOK ALIKE, FOR  
03:38PM 3 NETWORKING EQUIPMENT, WHAT WOULD YOU HAVE TO DO?

03:38PM 4 A. WELL, I WOULD FIRST START BY READING THE MANUAL. MAYBE I'M  
03:38PM 5 OLD SCHOOL, BUT I START WITH READING THE MANUAL. I ALSO HAVE  
03:39PM 6 RELIED HEAVILY ON MY BACKGROUND OF LEARNING HOW THE NETWORK  
03:39PM 7 PROTOCOLS WORK.

03:39PM 8 AND HAVING THAT UNDERSTANDING, I CAN TAKE THAT  
03:39PM 9 UNDERSTANDING OF HOW THE NETWORK PROTOCOLS WORK AND I CAN THEN  
03:39PM 10 MAP THAT INTO WHAT THE COMMANDS ARE THAT THE EQUIPMENT USES.

03:39PM 11 AND I LEARN THOSE COMMANDS FROM THAT WAY FIRST BY READING  
03:39PM 12 THROUGH THEIR MANUAL, THE DOCUMENTATION. AND THAT GIVES ME A  
03:39PM 13 SENSE OVERALL FOR HOW THE SYSTEM IS CONFIGURED. THEN I CAN  
03:39PM 14 START PICKING UP SPECIFIC CONFIGURATION COMMANDS TO PERFORM THE  
03:39PM 15 FUNCTIONS THAT I NEED TO PERFORM ON THE NETWORK.

03:39PM 16 Q. BASED ON YOUR EXPERIENCE AS A NETWORK CONSULTANT AND ALL  
03:39PM 17 THE WORK THAT YOU HAVE DONE FOR VARIOUS COMPANIES, IS IT A  
03:39PM 18 REQUIREMENT FOR A MULTI VENDOR NETWORK TO HAVE EACH VENDOR'S  
03:39PM 19 EQUIPMENT HAVE VIRTUALLY THE SAME USER INTERFACE?

03:39PM 20 A. NO, IT IS NOT.

03:39PM 21 MR. KWUN: OBJECTION, YOUR HONOR. EXPERT TESTIMONY.

03:39PM 22 MR. PAK: BASED ON HIS EXPERIENCE, YOUR HONOR.

03:39PM 23 THE COURT: OVERRULED.

03:39PM 24 MR. PAK: THAT'S ALL I HAVE, YOUR HONOR.

03:39PM 25 THE COURT: THANK YOU.

DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:06PM 1 CISCO CUSTOMERS; ISN'T IT TRUE?

04:06PM 2 A. I BELIEVE THEY ARE CONTINUING CISCO CUSTOMERS AS WELL.

04:06PM 3 Q. SO LET'S BREAK IT INTO PIECES. SO BEFORE THEY BOUGHT ANY

04:06PM 4 ARISTA EQUIPMENT SOME OF YOUR TOP CUSTOMERS WERE CISCO

04:06PM 5 CUSTOMERS; ISN'T THAT TRUE?

04:06PM 6 A. YES.

04:06PM 7 Q. OKAY. AND EVEN TODAY, THOSE SAME CUSTOMERS ARE BUYING

04:06PM 8 PRODUCTS FROM CISCO; ISN'T THAT RIGHT?

04:06PM 9 A. I WOULDN'T KNOW IN EVERY CASE, BUT I BELIEVE THAT TO BE

04:06PM 10 BROADLY CORRECT.

04:06PM 11 Q. AND SOME OF THESE TOP CUSTOMERS INCLUDE CUSTOMERS LIKE

04:06PM 12 MICROSOFT, FACEBOOK, CITIBANK; DID I GET THAT RIGHT?

04:06PM 13 A. YES.

04:07PM 14 Q. I WANT TO NOW SWITCH TOPICS TO TALK ABOUT SOME OF THE

04:07PM 15 COPYING IN THIS CASE. ARE YOU WITH ME?

04:07PM 16 A. YES.

04:07PM 17 Q. OKAY. YOU KNOW A PERSON NAMED DAVID SOLLENDER, CORRECT?

04:07PM 18 A. YES.

04:07PM 19 Q. HE WAS AN EMPLOYEE OF ARISTA; IS THAT RIGHT?

04:07PM 20 A. YES.

04:07PM 21 Q. AND AT ARISTA, HE WAS WHAT'S CALLED A TECHNICAL WRITER,

04:07PM 22 CORRECT?

04:07PM 23 A. THAT'S RIGHT.

04:07PM 24 Q. SO HE WOULD WRITE THE TECHNICAL MANUALS, USER DOCUMENTATION

04:07PM 25 FOR YOUR PRODUCTS; IS THAT RIGHT?

DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:11PM 1 THAT WERE COPIED FROM CISCO INTO ARISTA'S PRODUCTS; YOU

04:11PM 2 UNDERSTAND THAT, CORRECT?

04:11PM 3 A. SORRY, I DON'T QUITE KNOW WHAT YOU MEAN.

04:12PM 4 Q. YOU UNDERSTAND THAT ARISTA COPIED SOME OF THE COMMANDS AT

04:12PM 5 ISSUE IN THIS CASE FROM CISCO; YOU UNDERSTAND THAT, CORRECT?

04:12PM 6 A. OUR COMMAND INTERPRETER RECOGNIZES MANY OF THE SAME

04:12PM 7 COMMANDS, THAT'S RIGHT.

04:12PM 8 Q. ARE YOU DENYING, SIR, THAT ARISTA COPIED CISCO'S CLI

04:12PM 9 COMMANDS FROM CISCO SOURCES; ARE YOU DENYING THAT?

04:12PM 10 A. COPIED FROM?

04:12PM 11 Q. CISCO SOURCES?

04:12PM 12 A. NO, I'M NOT.

04:12PM 13 Q. YOU ARE NOT DENYING THAT, RIGHT?

04:12PM 14 A. NO.

04:12PM 15 Q. SO CISCO COPIED CLI COMMANDS AND SOME OUTPUTS FROM CISCO

04:12PM 16 SOURCES INTO ARISTA PRODUCTS, CORRECT?

04:12PM 17 A. WE DIDN'T COPY CISCO OUTPUTS INTO OUR CODE, NO, I DON'T

04:12PM 18 THINK THAT'S ACCURATE.

04:12PM 19 Q. LET ME FOCUS ON THE COMMANDS, WE WILL GET TO THE OUTPUTS

04:12PM 20 LATER.

04:12PM 21 ISN'T IT TRUE, SIR, THAT ARISTA COPIED SOME OF CISCO'S CLI

04:12PM 22 COMMANDS FROM CISCO SOURCES AND PUT IT INTO ARISTA'S PRODUCTS?

04:12PM 23 A. YES, THAT'S RIGHT.

04:12PM 24 Q. THAT'S RIGHT.

04:12PM 25 BUT NO ONE ELSE AT ARISTA HAS BEEN REPRIMANDED OR ASKED TO

DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:13PM 1 LEAVE FOR THAT COPYING, CORRECT?

04:13PM 2 A. WE DON'T BELIEVE IT WAS WRONG.

04:13PM 3 Q. AND AGAIN, YOU DIDN'T RECEIVE ANY TRAINING ON INTELLECTUAL  
04:13PM 4 PROPERTY PRIOR TO THIS LAWSUIT, CORRECT?

04:13PM 5 A. NO.

04:13PM 6 Q. OKAY.

04:13PM 7 AND YOU ADMIT, SIR, THAT IT'S NOT A COINCIDENCE THAT ARISTA  
04:13PM 8 HAS SO MANY CLI COMMANDS THAT WERE TAKEN FROM CISCO'S  
04:13PM 9 INTERFACE, THAT'S NOT A COINCIDENCE, IS IT, SIR?

04:13PM 10 A. NO, IT'S NOT.

04:13PM 11 Q. OKAY. IN FACT, YOU SAID ARISTA SLAVISHLY COPIED THE CISCO  
04:13PM 12 CLI COMMANDS; ISN'T THAT TRUE? SIR?

04:13PM 13 A. NO, I DIDN'T SAY THAT.

04:13PM 14 Q. LET'S TAKE A LOOK AT PAGE 47 OF YOUR DEPOSITION, LINE 19  
04:13PM 15 THROUGH 23.

04:14PM 16 MR. PAK: AND YOUR HONOR, MAY I PLAY THE VIDEO CLIP?

04:14PM 17 THE COURT: YES.

04:14PM 18 (WHEREUPON, A VIDEO DEPOSITION WAS PLAYED IN OPEN COURT.)

04:14PM 19 Q. THAT WAS YOUR SWORN TESTIMONY, SIR, RIGHT?

04:14PM 20 A. YES, BUT I WASN'T ACTUALLY TALKING ABOUT THE CISCO CLI IN  
04:14PM 21 THE CASE.

04:14PM 22 Q. THAT WAS YOUR SWORN TESTIMONY, WASN'T IT, SIR?

04:14PM 23 A. IT IS.

04:14PM 24 Q. OKAY. AND DESPITE ALL THIS COPYING, NOBODY AT ARISTA EVER  
04:14PM 25 APPROACHED CISCO FOR A LICENSE TO USE ANY OF CISCO'S CLI



DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:38PM 1 PAGE 300, LINE 10 TO 15. AND IF I COULD PLAY THE VIDEO  
04:38PM 2 TESTIMONY.

04:38PM 3 THE COURT: YES, YOU MAY.

04:38PM 4 MR. PAK: OKAY, LET'S GO AHEAD AND PLAY THAT.

04:38PM 5 (WHEREUPON, A VIDEO DEPOSITION WAS PLAYED IN OPEN COURT.)

04:38PM 6 BY MR. PAK:

04:38PM 7 Q. THAT WAS YOUR SWORN TESTIMONY, RIGHT, SIR?

04:38PM 8 A. YES.

04:38PM 9 Q. AND ISN'T IT ALSO TRUE THAT ARISTA REPLICATED SOME OF THE  
04:38PM 10 SCREEN OUTPUTS FROM CISCO'S PRODUCTS THAT ARE INVOKED BY THE  
04:38PM 11 USE OF CERTAIN CLI COMMANDS?

04:39PM 12 A. YES.

04:39PM 13 Q. AND THAT WAS DONE INTENTIONALLY BY ARISTA, CORRECT?

04:39PM 14 A. THAT'S RIGHT.

04:39PM 15 Q. AND WHEN YOU MADE THOSE DECISIONS, AGAIN, YOU NEVER  
04:39PM 16 CONTACTED CISCO ABOUT A LICENSE TO USE THE SCREEN OUTPUTS,  
04:39PM 17 CORRECT?

04:39PM 18 A. NO.

04:39PM 19 Q. AND ISN'T IT TRUE, SIR, THAT AS A TECHNICAL MATTER, ARISTA  
04:39PM 20 COULD HAVE USED A DIFFERENT USER INTERFACE THAN CISCO'S USER  
04:39PM 21 INTERFACE IN ORDER TO PROVIDE THE SAME NETWORKING FUNCTIONALITY  
04:39PM 22 IN ARISTA'S PRODUCTS?

04:39PM 23 A. CERTAINLY, THAT'S TECHNICALLY POSSIBLE.

04:39PM 24 Q. YOU COULD HAVE USED A GRAPHICAL USER INTERFACE, CORRECT?

04:39PM 25 A. THAT'S POSSIBLE, BUT I THINK THAT WOULD BE A VERY POOR

DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:39PM 1 CHOICE GIVEN OUR TARGET MARKET OF GOING AFTER THE CLOUD

04:39PM 2 CUSTOMERS, WOULD NOT PEAK WELL TO A GRAPHICAL USER INTERFACE

04:39PM 3 BECAUSE THEY ARE DIFFICULT TO AUTOMATE.

04:39PM 4 Q. SO CLOUD CUSTOMERS, IN YOUR OPINION, ACTUALLY VALUE AND

04:39PM 5 PREFER THE CLI COMMANDS FROM CISCO; IS THAT TRUE?

04:39PM 6 A. NO. IN FACT, OUR CLOUD CUSTOMERS GENERALLY DON'T CARE VERY

04:40PM 7 MUCH WHAT THE DETAILS OF THE COMMANDS ARE BECAUSE THEY'VE

04:40PM 8 AUTOMATED TO THE POINT WHERE IF ONE SWITCH AND ANOTHER SWITCH

04:40PM 9 HAVE DIFFERENT COMMANDS SYNTAXES, THEY CHANGE THEIR AUTOMATION

04:40PM 10 FRAMEWORK IN ONE PLACE AND THEY ARE DONE WITH IT.

04:40PM 11 Q. SO YOU COULD HAVE USED ANY CLI COMMANDS OTHER THAN THOSE

04:40PM 12 USED BY CISCO TO SELL YOUR PRODUCTS TO THOSE CUSTOMERS; ISN'T

04:40PM 13 THAT TRUE?

04:40PM 14 A. I THINK THE CLOUD CUSTOMERS WOULD NOT CARE VERY MUCH WHAT

04:40PM 15 COMMAND SYNTAX WE USE.

04:40PM 16 Q. SO YOU COULD HAVE SOLD ARISTA SWITCHES TO CLOUD COMPUTER

04:40PM 17 CUSTOMERS WITHOUT USING ANY OF THE CLI COMMANDS FROM CISCO, IS

04:40PM 18 THAT TRUE?

04:40PM 19 A. I THINK THAT'S PROBABLY TRUE.

04:40PM 20 Q. AND YOU HAVE ALSO ADMITTED, SIR, THAT YOU COULD TAKE OUT

04:40PM 21 ALL OF THE CLI COMMANDS FROM CISCO AND STILL BE ABLE TO PRODUCE

04:40PM 22 A WORKING PRODUCT; ISN'T THAT TRUE?

04:40PM 23 A. WE HAVE TO REPLACE THEM WITH SOMETHING, IF YOU SIMPLY

04:40PM 24 REMOVE THEM AND DIDN'T REPLACE THEM WITH SOMETHING TO PROVIDE A

04:40PM 25 COMFORTABLE FUNCTIONALITY, THE SYSTEM WOULD NO LONGER BE

DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:40PM 1

CONFIGUREABLE.

04:41PM 2

Q. WELL, YOU COULD REPLACE THEM WITH YOUR COMMANDS. YOU COULD

04:41PM 3

REPLACE THEM THE CISCO COMMAND WITH ARISTA'S OWN COMMANDS AND

04:41PM 4

YOUR PRODUCTS WOULD WORK JUST FINE; ISN'T THAT TRUE?

04:41PM 5

A. IT'S A LITTLE HYPOTHETICAL. I THINK WE WOULD HAVE TO COME

04:41PM 6

UP WITH AN ALTERNATIVE COMMAND LANGUAGE, BUT IT'S CERTAINLY

04:41PM 7

TECHNICALLY ACHIEVABLE.

04:41PM 8

Q. YOU CAN CERTAINLY REMOVE COMMANDS FROM YOUR PRODUCTS THAT

04:41PM 9

OVERLAP WITH CISCO'S CLI USER INTERFACE COMMANDS AS A TECHNICAL

04:41PM 10

MATTER; ISN'T THAT TRUE, SIR?

04:41PM 11

A. YES, YOU COULD REMOVE COMMANDS.

04:41PM 12

Q. AND IN FACT, YOU ACTUALLY HAVE AN INTERFACE CALLED

04:41PM 13

LINUX-INTERFACE THAT DOES NOT USE THE CISCO CLI COMMANDS; ISN'T

04:41PM 14

THAT TRUE?

04:41PM 15

A. THAT'S RIGHT.

04:41PM 16

Q. THAT'S CORRECT, RIGHT?

04:41PM 17

A. YES.

04:41PM 18

Q. AND YOU'VE SAID THAT YOU DON'T HAVE TO USE THE CLI IF YOU

04:41PM 19

DON'T WANT TO, THE NATIVE LINUX INTERFACES ARE ALL THERE AND

04:41PM 20

ABOUT 20 PERCENT OF OUR CUSTOMERS ADOPT A PURE LINUX APPROACH,

04:42PM 21

YOU'VE SAID THOSE THINGS, CORRECT?

04:42PM 22

A. I DID.

04:42PM 23

Q. YOU'VE HEARD A LOT ABOUT OPEN OR INDUSTRY STANDARD.

04:42PM 24

YOU'VE NEVER ASKED CISCO WHETHER CLI WAS AN OPEN STANDARD

04:42PM 25

THAT ANYONE CAN USE WITHOUT PERMISSION? YOU'VE NEVER ASKED

DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:42PM 1 THAT QUESTION, HAVE YOU?

04:42PM 2 A. WE NEVER ASKED. CISCO WAS CLEAR ON HIS DATA SHEET THAT IT

04:42PM 3 WAS AN INDUSTRY STANDARD.

04:42PM 4 Q. YOU NEVER ASKED CISCO WHAT IT MEANT WHEN IT USED THE WORD

04:42PM 5 INDUSTRY STANDARD IN DESCRIBING ITS CLI, CORRECT?

04:42PM 6 A. WE DID NOT.

04:42PM 7 Q. OKAY. ARISTA NEVER PROPOSED ANY INDUSTRY STANDARD

04:42PM 8 ORGANIZATION TO STANDARDIZE CLI COMMANDS; ISN'T THAT TRUE?

04:42PM 9 A. NO, WE NEVER DID.

04:42PM 10 Q. NOR HAS ARISTA EVER TRIED TO ESTABLISH AN ORGANIZATION THAT

04:42PM 11 WOULD FORM AN INDUSTRY STANDARD FOR COMMAND-LINE INTERFACES;

04:42PM 12 ISN'T THAT TRUE?

04:42PM 13 A. WE FEEL THERE'S AN EXISTING INDUSTRY STANDARD THAT WORKS

04:42PM 14 QUITE WELL SO WE NEVER ESTABLISHED ABOUT ALTERNATIVE.

04:42PM 15 Q. YOU NEVER DID THAT, RIGHT, SIR?

04:43PM 16 A. THAT'S RIGHT.

04:43PM 17 Q. OKAY. AND YET YOU KNOW OF NO INDUSTRY RATIFIED STANDARD

04:43PM 18 TODAY THAT MANDATES THE USE OF CISCO CLI COMMANDS; ISN'T THAT

04:43PM 19 TRUE, SIR?

04:43PM 20 A. THAT'S RIGHT.

04:43PM 21 Q. OKAY.

04:43PM 22 MR. PAK: YOUR HONOR, IF I COULD TAKE A QUICK BREAK

04:43PM 23 TO SEE IF I NEED TO DO ANYTHING ELSE.

04:43PM 24 THE COURT: SURE.

04:43PM 25 (OFF-THE-RECORD DISCUSSION.)

08:21AM

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) NOVEMBER 30, 2016  
)  
ARISTA NETWORKS, INC., ) VOLUME 5  
)  
DEFENDANT ) PAGES 820-1114  
)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: DAVID A. NELSON  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
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FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

08:54AM 1 ALMEROOTH DOCUMENT?

08:54AM 2 MR. PAK: NO, YOUR HONOR. THIS IS A MR. LANG  
08:54AM 3 DOCUMENT.

08:54AM 4 ARISTA ACTUALLY STATED IN ITS OBJECTION --

08:54AM 5 THE COURT: I THOUGHT THAT WAS WITHDRAWN?

08:54AM 6 MR. PAK: THAT'S RIGHT.

08:54AM 7 IT DOES NOT OBJECT TO EXHIBIT 4803, TO THE EXTENT CISCO  
08:54AM 8 INTENDS TO HAVE MR. LANG TESTIFY THAT THE DOCUMENTS WERE  
08:54AM 9 DEPOSITED WITH THE COPYRIGHT OFFICE AND PUTS ALL THE DEPOSITING  
08:54AM 10 MATERIAL INTO EVIDENCE.

08:54AM 11 SO THAT'S WHAT WE INTEND TO DO, YOUR HONOR, SO I DON'T  
08:54AM 12 UNDERSTAND THE OBJECTION ON 4803.

08:54AM 13 MR. ROSEN: WELL WE ARE JUST CONCERNED, GIVEN THE  
08:54AM 14 SHEER NUMBER OF ENTRIES THAT MR. LANG WILL NOT BE ABLE TO  
08:54AM 15 ESTABLISH FOUNDATION FOR EACH ONE OF THESE.

08:54AM 16 MR. PAK: YOUR HONOR, THESE ARE -- JUST TO BE CLEAR,  
08:54AM 17 THESE ARE THE -- ALL THE BUSINESS RECORDS THAT EVIDENCE -- AS  
08:54AM 18 YOUR HONOR KNOWS, WE HAVE 26 COPYRIGHT REGISTRATIONS AT ISSUE  
08:55AM 19 IN THIS CASE. THEY COVER A LONG PERIOD OF TIME WITH LOTS OF  
08:55AM 20 DIFFERENT VERSIONS OF THE FOUR OPERATING SYSTEMS.

08:55AM 21 THE COURT: THESE ARE THE REGISTRATIONS.

08:55AM 22 MR. PAK: THAT'S RIGHT, YOUR HONOR.

08:55AM 23 AND WE ARE TRYING TO FIGURE OUT A STREAMLINED FASHION.  
08:55AM 24 THERE'S OBVIOUSLY NO DISPUTE ABOUT THE AUTHENTICITY ABOUT THE  
08:55AM 25 DOCUMENTS AND THE RELEVANCE.

08:55AM 1 THE COURT: AND YOU'VE DISCLOSED THEM ALL.

08:55AM 2 MR. PAK: OF COURSE. THIS IS AN ISSUE OF, HOW DO WE  
08:55AM 3 GET THROUGH THIS PART OF TRIAL AS QUICKLY AS WE CAN.

08:55AM 4 WE WOULD LIKE TO BE ABLE TO USE THE 4803 DOCUMENT TO BE  
08:55AM 5 ABLE TO ESTABLISH THAT THESE WERE ALL THE DIFFERENT TYPES OF  
08:55AM 6 DOCUMENTS THAT WERE REGISTERED WITH THE COPYRIGHT OFFICE.

08:55AM 7 THE COURT: AND THE JURY IS NOT GOING TO HAVE ALL THE  
08:55AM 8 KEYS THEMSELVES OR ARE THEY?

08:55AM 9 MR. PAK: WE CAN MOVE ALL OF THAT INTO EVIDENCE,  
08:55AM 10 YOUR HONOR. JUST TO BE CLEAR, IF WE DO THAT, I MAY HAVE A  
08:55AM 11 SUGGESTION FOR, YOUR HONOR, IT'S LET LITERALLY BOXES AND BOXES,  
08:55AM 12 IT MIGHT FILL THIS ENTIRE ROOM.

08:55AM 13 THE COURT: WELL, LUCKILY WE ARE NOT DEALING WITH  
08:55AM 14 PAPER.

08:55AM 15 MR. PAK: SO I THINK WE WANT TO PUT IT ON SOME TYPE  
08:55AM 16 OF USB DRIVE OR A COMPUTER THAT THE JURY CAN LOOK AT IF THEY  
08:56AM 17 WANT TO, BUT WE WOULD LIKE TO FIGURE OUT AN EFFICIENT MECHANISM  
08:56AM 18 TO GET INTO THE RECORD THE 26 COPYRIGHT REGISTRATIONS WHICH  
08:56AM 19 CONSIST OF ALL THE DIFFERENT USER MANUALS.

08:56AM 20 THE COURT: AND OF COURSE I'M LOOKING FOR WHERE I  
08:56AM 21 WOULD FIND -- THE TROUBLE I HAVE IS THAT IT'S HARD FOR ME TO  
08:56AM 22 FIND, I WANT TO LOOK AT IT AGAIN.

08:56AM 23 SO THIS IS 80 PAGES, THIS IS 26 REGISTRATIONS BUT IT'S MORE  
08:56AM 24 THAN THAT. THAT'S WHY I WAS REALLY STRUGGLING A LITTLE BIT TO  
08:57AM 25 UNDERSTAND, THIS IS A SUMMARY INDEX OF THE REGISTRATIONS.

08:57AM 1 MR. PAK: RIGHT, YOUR HONOR.

08:57AM 2 THE COURT: AND YOU HAVE DESIGNATED EACH ONE AS AN  
08:57AM 3 EXHIBIT.

08:57AM 4 MR. PAK: OF COURSE. AND SO THE EXHIBIT NUMBERS ARE  
08:57AM 5 IN THE RIGHT HAND COLUMN, YOUR HONOR.

08:57AM 6 IN THIS DOCUMENT YOU CAN SEE IN THE INDEX THERE'S THE  
08:57AM 7 DESCRIPTION OF THE DOCUMENT, THE BATES NUMBER SHOWING IT WAS  
08:57AM 8 PRODUCED IN THIS CASE. THERE'S A TRIAL EXHIBIT NUMBER ON THE  
08:57AM 9 RIGHT-HAND COLUMN.

08:57AM 10 SO THIS IS A SUMMARY OF ALL THE REGISTRATIONS WE HAVE MADE  
08:57AM 11 THAT HAVE BEEN PRODUCED IN THIS CASE.

08:57AM 12 THE COURT: SO WHEN YOU SAID 26 REGISTRATIONS --

08:57AM 13 MR. PAK: YES, YOUR HONOR.

08:57AM 14 THERE WERE OFFICIALLY 26 REGISTRATIONS, EACH OF THOSE  
08:57AM 15 REGISTRATIONS CONTAINS A NUMBER OF MANUALS AND SOURCE CODE AND  
08:57AM 16 THAT'S THE REASON WHY WE HAVE MULTIPLE EXHIBITS.

08:57AM 17 THE COURT: I SEE. GOT IT.

08:57AM 18 MR. PAK: PER REGISTRATION.

08:57AM 19 AND I GUESS I WOULD ASK YOUR HONOR FOR GUIDANCE ON THIS.  
08:57AM 20 WE HAVE LITERALLY HUNDREDS OF EXHIBIT NUMBERS THAT CORRESPOND  
08:58AM 21 TO --

08:58AM 22 THE COURT: THIS RAISES THE ISSUE AS WELL AND MAYBE  
08:58AM 23 IT'S SIMPLE, ON THE SUBMITTING THE WORK AS A WHOLE BECAUSE  
08:58AM 24 AFTER THE ELECTRONIC ARTS NINTH CIRCUIT RULING, I SORT OF, I  
08:58AM 25 WANT TO MAKE SURE THAT WE HAVE THAT IN, THAT'S YOUR JOB AND YOU



08:58AM 1 KNOW HOW TO DO IT.

08:58AM 2 MR. PAK: SO WOULD YOU LIKE -- HOW WOULD YOU LIKE TO  
08:58AM 3 PROCEED BECAUSE WE HAVE MR. LANG, HE'S AVAILABLE TO TESTIFY  
08:58AM 4 TODAY. HE IS, SO WE WOULD LIKE TO FIGURE OUT A MECHANISM WHERE  
08:58AM 5 HE CAN INTRODUCE INTO THE RECORD, OBVIOUSLY THE ELECTRIC ARTS  
08:58AM 6 CASE, THAT WAS AN IMPORTANT ISSUE, SO WE WANT TO MAKE SURE ALL  
08:58AM 7 THESE THINGS ARE IN THE RECORD.

08:58AM 8 THE COURT: YEAH.

08:58AM 9 MR. PAK: ON THE OTHER HAND, I GUESS I SUPPOSE HE  
08:58AM 10 COULD WALK THROUGH AND JUST DESCRIBE EACH DOCUMENT.

08:58AM 11 THE COURT: SO I MEAN THIS IS REALLY, THIS WE CALL AN  
08:58AM 12 INDEX OR SUMMARY DOCUMENT, AND IT IS CLEARLY SUPPORTED BY  
08:58AM 13 DOCUMENTATION THAT IS PUBLICLY FILED AVAILABLE, BEEN DISCLOSED,  
08:58AM 14 AND WHAT I'M INCLINED TO DO IS, I DON'T ALLOW YOU TO JUST  
08:58AM 15 SUBMIT DOCUMENTS WITHOUT THEM COMING THROUGH A WITNESS IN  
08:59AM 16 COURT, BUT WE ARE NOT GOING TO DO THAT.

08:59AM 17 SO THE SUMMARY, AND THEN YOU CAN SIMPLY TELL THE JURY THAT  
08:59AM 18 EACH OF THESE REGISTRATIONS IS IN EVIDENCE, THEY WILL HAVE IT  
08:59AM 19 ELECTRICALLY, I DO NOT WANT THE PAPER IF THE COURTROOM.

08:59AM 20 MR. PAK: THANK YOU, YOUR HONOR.

08:59AM 21 THE COURT: AND I WILL ALLOW THIS ONE, 4803, I'M  
08:59AM 22 GOING TO -- I'M GOING TO OVERRULE THAT OBJECTION.

08:59AM 23 MR. PAK: I APPRECIATE THAT VERY MUCH, YOUR HONOR.

08:59AM 24 THE COURT: OKAY. AND I DO THINK -- IT'S UP TO YOU  
08:59AM 25 IF YOU WANT TO SUBMIT ALL OF THESE REGISTRATIONS, IF THAT'S ANY

08:59AM 1 DOUBT ABOUT THE NEED FOR IT.

08:59AM 2 MR. PAK: I THINK WE NEED TO DO THAT.

08:59AM 3 THE COURT: I THINK THAT YOU PROBABLY NEED TO. OKAY.

08:59AM 4 WE'VE USED UP OUR HALF AN HOUR.

08:59AM 5 MR. VAN NEST: WE GOT A PLAN THOUGH, YOUR HONOR.

08:59AM 6 THE COURT: A PLAN IS GOOD.

08:59AM 7 MR. NELSON: WE WORKED SOMETHING OUT.

08:59AM 8 MR. VAN NEST: WHAT WE THOUGHT MADE SENSE WITH OUR

08:59AM 9 JURY HERE OUR WITNESSES HERE ASK ALL OF THAT, THE ONLY OTHER

08:59AM 10 STUFF IS DR. ALMEROTH AND MR. NELSON AND I HAVE AGREED TO TALK

08:59AM 11 FURTHER, AND IT'S NOT CERTAIN THAT WE WILL EVEN GET TO HIM

09:00AM 12 TODAY, BUT IF WE DO, HE'S AGREED TO STAY ON THE STUFF THAT'S

09:00AM 13 NOT OBJECTED TO, EXHIBIT-WISE AND GRAPHICS-WISE, AND WE CAN

09:00AM 14 TAKE IT UP END OF THE DAY TODAY OR TOMORROW, BUT WE WILL TRY TO

09:00AM 15 WORK IT OUT AND NARROW THE DISPUTES FURTHER SO YOU DON'T HAVE

09:00AM 16 MUCH TO DO.

09:00AM 17 THE COURT: OKAY. I APPRECIATE THAT BECAUSE

09:00AM 18 UNFORTUNATELY, MANY -- THE FIRST CATEGORY MOST OF THEM WERE

09:00AM 19 E-MAILS AND I'M ACTUALLY NOT USED TO EXPERTS INTRODUCING

09:00AM 20 DOCUMENTS LIKE THIS.

09:00AM 21 MR. VAN NEST: RIGHT.

09:00AM 22 THE COURT: SO IN A SENSE, IT MAY GO FAST FOR ME IF

09:00AM 23 YOU CAN GIVE ME THE NUMBERS THAT ARE E-MAILS AND MAKE ONE

09:00AM 24 ARGUMENT, WHICH I'M SURE YOU WERE GOING TO DO.

09:00AM 25 MR. VAN NEST: THAT'S WHAT I WAS GOING TO DO. BUT I

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:39AM 1 ON THE SWITCH.

09:39AM 2 Q. IS THERE ONLY ONE POSSIBLE WAY TO STATE ANY PARTICULAR CLI  
09:39AM 3 COMMAND.

09:39AM 4 A. NO THERE'S USUALLY MORE THAN ONE WAY TO SAY ALMOST  
09:39AM 5 ANYTHING.

09:39AM 6 Q. ARE THE OPTIONS LIMITED?

09:39AM 7 A. I THINK THE OPTIONS ARE QUITE LIMITED, IF YOU HAVE AN  
09:39AM 8 EXISTING STRUCTURE FOR YOUR CLI, YOU WOULD WANT YOUR COMMANDS  
09:39AM 9 TO BASICALLY FOLLOW THAT STRUCTURE TO BE CONSISTENT WITH OTHER  
09:39AM 10 COMMANDS IN YOUR CLI.

09:39AM 11 FURTHER, THE WORDS IN THE COMMAND THEMSELVES, LARGELY COME  
09:39AM 12 FROM INDUSTRY STANDARD DOCUMENTS, WORDS LIKE ROUTE OR IP.  
09:39AM 13 THESE ARE INDUSTRY STANDARD TERMS, THERE AREN'T A LOT OF  
09:39AM 14 ALTERNATIVES FOR THEM.

09:39AM 15 Q. HOW MUCH OF THE INDUSTRY STANDARD CLI CONSISTS OF STANDARD  
09:40AM 16 NETWORKING TERMINOLOGY?

09:40AM 17 A. MOST OF THE COMMAND WORDS, MOST OF THE WORDS THAT MAKE UP  
09:40AM 18 OUR COMMANDS FROM COME INDUSTRY STANDARD SOURCES.

09:40AM 19 Q. AND EVEN IF YOU USE THAT INDUSTRY STANDARD TERMINOLOGY,  
09:40AM 20 DON'T YOU HAVE CHOICES TO MAKE AS FAR AS HOW YOU STRING THOSE  
09:40AM 21 WORDS TOGETHER TO MAKE UP A COMMAND?

09:40AM 22 A. YOU MAY HAVE SOME CHOICE, BUT AGAIN, IT'S PRETTY LIMITED.  
09:40AM 23 NOT TOO MANY WORD ORDERS MAKE A LOT OF SENSE.

09:40AM 24 FOR EXAMPLE, IF YOU HAVE A COMMAND TO SHOW THE IP ROUTES  
09:40AM 25 YOU'VE LEARNED ON YOUR SWITCH, YOU COULD DO SHOW IP ROUTE OR

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:43AM 1 Q. NOW I WANT TO GO BACK AND JUST ESTABLISH SOME FACTS. I  
09:43AM 2 THINK THERE WERE SOME QUESTIONS ABOUT E-MAILS, BUT I THINK IT'S  
09:43AM 3 UNDISPUTED NOW THAT ARISTA COPIED CLI COMMANDS FROM CISCO'S  
09:43AM 4 SOURCE CODE?

09:43AM 5 A. THAT'S RIGHT.

09:43AM 6 Q. WITH RESPECT TO SCREEN OUTPUTS, YOU WOULD AGREE WITH ME,  
09:43AM 7 SIR, THAT IF ANY OF CISCO'S SCREEN OUTPUTS CONTAIN EXPRESSIVE  
09:44AM 8 WORK, THEN ARISTA CANNOT USE THAT MATERIAL WITHOUT A LICENSE  
09:44AM 9 FROM CISCO; ISN'T THAT TRUE?

09:44AM 10 MR. SILBERT: OBJECTION. CALLS FOR A LEGAL  
09:44AM 11 CONCLUSION.

09:44AM 12 MR. PAK: THAT'S YOUR BELIEF, RIGHT?

09:44AM 13 THE COURT: SUSTAINED.

09:44AM 14 BY MR. PAK:

09:44AM 15 Q. YOU TESTIFIED EARLIER THAT YOU HAD CERTAIN BELIEFS ABOUT  
09:44AM 16 WHAT YOU CAN DO PROPERLY AND WHAT YOU CANNOT DO PROPERLY WITH  
09:44AM 17 RESPECT TO CISCO'S COMMANDS; IS THAT TRUE?

09:44AM 18 A. I BELIEVE SO.

09:44AM 19 Q. OKAY. DO YOU BELIEVE ON BEHALF OF ARISTA THAT YOU CAN TAKE  
09:44AM 20 ANY OF THE SCREEN OUTPUTS FROM CISCO WITHOUT A LICENSE; IS THAT  
09:44AM 21 YOUR TESTIMONY?

09:44AM 22 MR. SILBERT: SAME OBJECTION.

09:44AM 23 THE COURT: SUSTAINED.

09:44AM 24 BY MR. PAK:

09:44AM 25 Q. DID YOU FORM ANY SUBJECTIVE BELIEFS ON BEHALF OF ARISTA

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:08AM 1 Q. AND YOU SEE THE QUESTION THERE, PRIOR TO CISCO, HAD YOU  
10:08AM 2 DONE ANY TYPE OF SOFTWARE DEVELOPMENT FOR NETWORK EQUIPMENT,  
10:08AM 3 ANSWER NOT FOR NETWORK EQUIPMENT?

10:08AM 4 A. THAT'S RIGHT.

10:08AM 5 Q. OKAY. SO NOW THEN YOU CAME DIRECTLY FROM CISCO TO ARISTA  
10:08AM 6 IN 2007, CORRECT?

10:08AM 7 A. THAT'S CORRECT.

10:08AM 8 Q. NO COMPANIES IN BETWEEN?

10:08AM 9 A. NO.

10:08AM 10 Q. NOW WHEN YOU WERE AT CISCO, YOU WERE PART OF AN E-MAIL  
10:09AM 11 GROUP CALLED THE PARSER-POLICE, RIGHT?

10:09AM 12 A. YES, I WAS.

10:09AM 13 Q. AND IN FACT, YOU PROPOSED SOME CLI COMMANDS AS PART OF YOUR  
10:09AM 14 WORK AT CISCO, RIGHT?

10:09AM 15 A. I DID.

10:09AM 16 Q. AND YOU ALSO COMMENTED THROUGH THIS PARSER-POLICE E-MAIL ON  
10:09AM 17 COMMANDS THAT OTHER FOLKS HAD PRESENTED, CORRECT?

10:09AM 18 A. IF IT RELATED TO MY AREA OF EXPERTISE, THEN YES.

10:09AM 19 Q. RIGHT. SO SOMETIMES YOU DID, RIGHT?

10:09AM 20 A. YES.

10:09AM 21 Q. AND YOU UNDERSTAND ON THIS PARSER-POLICE E-MAIL, PEOPLE  
10:09AM 22 WOULD SOMETIMES EXPRESS DISAGREEMENT ABOUT HOW THE COMMANDS  
10:09AM 23 SHOULD BE STRUCTURED, WHAT THEY SHOULD SAY, WHAT THEY SHOULD  
10:09AM 24 BE, RIGHT?

10:09AM 25 A. THAT'S CORRECT.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:09AM 1 Q. AND THERE WAS E-MAILS GOING BACK AND FORTH AND HEALTHY  
10:09AM 2 DISCUSSION ABOUT WHAT THOSE THINGS SHOULD BE, CORRECT?

10:09AM 3 A. YES.

10:09AM 4 Q. AND THAT WENT ON DURING THE TIME THAT YOU WERE AT CISCO FOR  
10:09AM 5 THE CLI COMMAND DEVELOPMENT, RIGHT?

10:09AM 6 A. YES.

10:09AM 7 Q. NOW I WANT TO SWITCH GEARS A LITTLE BIT HERE. SO YOU'RE  
10:09AM 8 AWARE THAT MANY OF THE SENIOR OFFICERS AND FOUNDERS OF ARISTA  
10:09AM 9 CAME FROM CISCO, RIGHT?

10:10AM 10 A. THAT'S CORRECT.

10:10AM 11 Q. AND YOU KNOW THAT THERE ARE TIMES WHEN ARISTA HAS PUT  
10:10AM 12 FEATURES IN ITS PRODUCTS WHERE IT WAS EMULATING FEATURES THAT  
10:10AM 13 PRE-EXISTED IN CISCO PRODUCTS; ISN'T THAT RIGHT?

10:10AM 14 A. THAT'S RIGHT.

10:10AM 15 Q. NOW WHEN YOU CAME, LET ME JUST GO BACK IN TIME. YOU CAME  
10:10AM 16 IN 2007, WAS IT LIKE MID-2007?

10:10AM 17 A. JULY, 2007.

10:10AM 18 Q. JULY 2007 SO PRETTY MUCH RIGHT SMACK IN THE MIDDLE OF 2007.  
10:10AM 19 SO WHEN YOU CAME, ARISTA ACTUALLY HAD A SWITCH THAT WAS  
10:10AM 20 RUNNING, I BELIEVE YOU DESCRIBED THEM AS CISCO-LIKE CLI'S  
10:10AM 21 RIGHT?

10:10AM 22 A. WE HAD A SWITCH THAT HAD A BASIC CLI, WE HAD VERY FEW  
10:10AM 23 FEATURES AT THAT TIME, BUT IT WAS UP AND RUNNING IN THE LAB.

10:10AM 24 Q. IT WAS UP AND RUNNING, AND IN FACT IN SEPTEMBER OF 2007,  
10:10AM 25 YOU ACTUALLY SHIPPED ONE OF THOSE SWITCHES TO A MR. JEFF LAPIK

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:14AM 1 Q. WELL ENOUGH FEATURES SO THAT YOU SHIPPED ONE A COUPLE  
10:14AM 2 MONTHS LATER TO MR. LAPIK, I BELIEVE IT IS, AT UNIVERSITY OF  
10:14AM 3 NEW HAMPSHIRE, RIGHT?  
10:14AM 4 A. ENOUGH FEATURES TO TEST THE POWER, CORRECT.  
10:14AM 5 Q. SO THEN WE CAN SAY BY THAT TIME IT'S SOMEWHERE SOUTH FOR  
10:14AM 6 2007 SOME WERE SOUTH OF \$2.5 MILLION, RIGHT?  
10:14AM 7 A. YES.  
10:14AM 8 Q. MAYBE ABOUT HALF OF THAT?  
10:14AM 9 A. JULY IS MAJOR, SO YES.  
10:14AM 10 Q. SO THE TOTAL EXPENDITURE TO QUIET A SWITCH THAT HAD EOS AND  
10:14AM 11 WAS RUNNING IOS-LIKE CLI, WAS LESS THAN \$2 MILLION, RIGHT?  
10:14AM 12 A. YES, THAT'S CORRECT.  
10:14AM 13 Q. NOW YOU ARE AWARE THAT CISCO IN TERMS OF DEVELOPMENT ON ITS  
10:14AM 14 PRODUCTS SPENDS NORTH OF \$5 BILLION A YEAR ON RESEARCH AND  
10:15AM 15 DEVELOPMENT, RIGHT?  
10:15AM 16 A. IN TODAY'S TIME, THAT SOUNDS RIGHT.  
10:15AM 17 Q. NOW, SIR, I WOULD LIKE TO TALK TO YOU ABOUT A FEW OTHER  
10:15AM 18 THINGS HERE. SO IT'S TRUE THAT ARISTA INTENTIONALLY COPIED  
10:15AM 19 CISCO'S CLI, RIGHT?  
10:15AM 20 A. IT'S TRUE THAT WE USED THE SAME CLI FOR MANY OF OUR BASE OR  
10:15AM 21 CORE FEATURES.  
10:15AM 22 Q. AND INTENTIONALLY COPIED THAT, RIGHT?  
10:15AM 23 A. FOR THOSE CORE FEATURES, YES.  
10:15AM 24 Q. CORE FEATURES, IS THAT WHAT YOU SAID?  
10:15AM 25 A. THAT'S RIGHT.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:15AM 1 Q. OKAY. AND YOU ACTUALLY TOLD, WHEN YOUR INTERACTIONS WITH  
10:15AM 2 CUSTOMERS, THAT YOUR CLI IS JUST LIKE CISCO'S CLI, RIGHT?

10:15AM 3 A. IN THE EARLY DAYS, YES, THAT'S TRUE.

10:15AM 4 Q. OKAY. AND YOU KNOW THAT OTHERS AT ARISTA HAVE SAID THE  
10:15AM 5 SAME THINGS TO CUSTOMERS, RIGHT?

10:16AM 6 A. YES.

10:16AM 7 Q. NOW I WANT TO TURN TO YOUR BINDER. IN EXHIBIT 197, THIS  
10:16AM 8 WAS ACTUALLY JUST MOVED INTO EVIDENCE. SO WE DON'T NEED TO DO  
10:16AM 9 THAT.

10:16AM 10 SO IF YOU COULD JUST DISPLAY EXHIBIT 197 AGAIN, MR. FISHER.

10:16AM 11 SO THIS IS AN E-MAIL, THE WHOLE EXHIBIT, AND YOU CAN GO  
10:16AM 12 FLIP THROUGH, WOULD BE AN E-MAIL STRING BETWEEN MR. DUDA,  
10:16AM 13 MR. SWEENEY, MR. HAFEEZ AND YOURSELF?

10:16AM 14 A. THAT'S RIGHT.

10:16AM 15 Q. NOW I JUST WANT TO ASK YOU A FEW QUESTIONS ABOUT THIS. SO  
10:16AM 16 IF WE CAN GO BACK, AND I THINK IN TIME, THESE KIND OF GO IN  
10:16AM 17 REVERSE ORDER MEANING THE OLDEST ONE IS AT THE BACK?

10:17AM 18 A. THAT'S RIGHT.

10:17AM 19 Q. SO LET'S KIND OF GO BACK THERE AND LOOK AT THE VERY LAST  
10:17AM 20 ONE. THIS STARTS, THE LAST PAGE WOULD BE PAGE 3 OF THAT.

10:17AM 21 SO THAT'S AN E-MAIL FROM MR. SWEENEY TO YOURSELF, RIGHT?

10:17AM 22 A. THAT'S RIGHT.

10:17AM 23 Q. AND HE'S EXPRESSING, YOUR UNDERSTANDING, SOME OPINIONS ON  
10:17AM 24 CLI FUNCTIONALITY RELATED TO A FEATURE CALLED ACL, RIGHT?

10:17AM 25 A. THAT'S CORRECT.



DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:20AM 1 Q. OKAY. BUT IT'S TWO INDUSTRY STANDARDS WE GOT SO FAR,  
10:20AM 2 RIGHT?

10:20AM 3 A. DEPENDING ON THE WORDING. JUNIPER WAS A SERVICE PROVIDER  
10:20AM 4 SELLING ROUTERS, NOT SWITCHES. SO THE CUSTOMER WAS FAMILIAR  
10:20AM 5 WITH JUNIPER ROUTERS IN THE SERVICE PROVIDER SPACE. THEY WOULD  
10:21AM 6 CONSIDER JUNOS CLI ACCEPTABLE.

10:21AM 7 BUT CISCO HAD 80 PERCENT MARKET SHARE IN SWITCHING, SO  
10:21AM 8 MAJORITY OF THE WORLD, THEY WERE MORE FAMILIAR WITH THE  
10:21AM 9 CISCO-LIKE CLI. AND NOT ARISTA ALONE, BUT MANY OF THE  
10:21AM 10 COMPANIES ARE WERE USING THE SAME CLI AT THAT TIME.

10:21AM 11 Q. RIGHT.

10:21AM 12 SO YOU USED THE TERM INDUSTRY STANDARD TO DESCRIBE WHAT YOU  
10:21AM 13 JUST DESCRIBED FOR US HERE IN COURT, RIGHT?

10:21AM 14 A. YES, THE DE FACTO INDUSTRY STANDARD.

10:21AM 15 Q. SO YOU ARE JUST SAYING IT'S POPULAR IN THE INDUSTRY, RIGHT?

10:21AM 16 A. YES.

10:21AM 17 Q. THAT'S ALL WE ARE TALKING ABOUT, IT'S JUST POPULAR IN THE  
10:21AM 18 INDUSTRY?

10:21AM 19 A. I AGREE.

10:21AM 20 Q. OKAY. I JUST WANTED TO CLEAR THAT UP BECAUSE WE HAVE BEEN  
10:21AM 21 GOING AROUND ON THIS, BUT I APPRECIATE THAT.

10:21AM 22 SO THE -- AND THERE ARE OTHER VENDORS OUT THERE THAT YOU  
10:21AM 23 UNDERSTAND FROM YOUR WORK THAT USE DIFFERENT COMMAND  
10:21AM 24 STRUCTURES, RIGHT?

10:21AM 25 A. AT THE TIME, VERY FEW, MOST ACTUALLY USE THE IOS-LIKE CLI.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:31AM 1 INDUSTRY STANDARD AS OPPOSED TO JUNOS THAT I ALSO SAY IS AN  
10:31AM 2 INDUSTRY STANDARD, RIGHT?

10:31AM 3 A. DEPENDING ON THE CUSTOMER, YES.

10:31AM 4 Q. SO YOU WERE MORE INTERESTED IN CISCO'S CUSTOMERS THAN  
10:31AM 5 JUNIPER'S CUSTOMERS, RIGHT?

10:31AM 6 A. WE WERE MORE INTERESTED IN THE LARGER ENTERPRISES, AND IN  
10:31AM 7 SWITCHING, THAT'S WHERE CISCO HAD A MUCH BIGGER MARKET SHARE.

10:32AM 8 Q. ALL RIGHT, SIR. SO LET ME MOVE TO ANOTHER TOPIC HERE.

10:32AM 9 THE COURT: MAYBE THIS WOULD BE A GOOD TIME FOR OUR  
10:32AM 10 BREAK THEN. WOULD THAT BE ALL RIGHT?

10:32AM 11 MR. NELSON: YES. THANK YOU, YOUR HONOR.

10:32AM 12 THE COURT: ALL RIGHT. LET'S TAKE OUR MORNING BREAK.  
10:32AM 13 WE WILL COME BACK AT A QUARTER TO 11:00.

10:32AM 14 (WHEREUPON A RECESS WAS TAKEN.)

10:46AM 15 THE COURT: WE ARE BACK ON THE RECORD AND ALL OF OUR  
10:46AM 16 JURORS ARE HERE.

10:46AM 17 MR. NELSON, WOULD YOU LIKE TO CONTINUE?

10:46AM 18 MR. NELSON: YES, THANK YOU, YOUR HONOR.

10:46AM 19 Q. WELCOME BACK, SIR.

10:47AM 20 SO I WANT YOU TO TURN TO EXHIBIT 376 IN YOUR BINDER.

10:47AM 21 AND -- 376. IT'S KIND OF THE TAB HIDES, IT HID ON ME, IT'S THE  
10:47AM 22 TOP, IT SHOULD BE RIGHT BEHIND 370.

10:47AM 23 A. 374 AND 378.

10:47AM 24 Q. 370 THEN --

10:47AM 25 THE COURT: IT IS, IT'S OUT OF ORDER. IT'S BEFORE

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

EVIDENCE, YOUR HONOR.

THE COURT: ANY OBJECTION?

MR. FERRALL: NO OBJECTION.

THE COURT: IT WILL BE ADMITTED.

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 404, HAVING BEEN  
PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO  
EVIDENCE.)

BY MR. NELSON:

Q. SO LET'S LOOK AT MIDDLE OF THE PAGE. SO MR. FOSS FIRST,  
CAN YOU TELL US WHO MR. FOSS IS?

A. AT THAT TIME MARK FOSS WAS RESPONSIBLE FOR PARTNER OR  
CHANNEL PROGRAMS AT ARISTA.

Q. PARTNER CHANNEL PROGRAMS?

A. CHANNEL PROGRAMS, YES.

Q. SO IF YOU LOOK AT THE MIDDLE OF THE E-MAIL THE ONE THAT'S  
FROM MR. FOSS TO THE PEOPLE AT FACEBOOK.

DO YOU SEE THAT?

A. YES.

Q. IT SAYS, AS I MENTIONED TO DAN LAST NIGHT, THE CLI COMMANDS  
IN OUR SWITCH ARE IDENTICAL TO CISCO IOS SO THERE SHOULD BE NO  
LEARNING CURVE TO GET IT CONFIGURED.

DO YOU SEE THAT?

A. YES.

Q. SO THAT'S SOMETHING THAT ARISTA SALES ENGINEERS WERE OUT  
TELLING CUSTOMERS IS A SELLING POINT OF THE ARISTA SWITCH,

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:08AM 1

CORRECT?

11:08AM 2

A. WE WERE SAYING THAT TO CUSTOMERS, YES.

11:08AM 3

Q. RIGHT. WE'RE IDENTICAL TO CISCO IOS SO YOU WON'T HAVE ANY

11:08AM 4

LEARNING CURVE TO USE OUR PRODUCT, CORRECT?

11:08AM 5

A. THAT'S RIGHT.

11:08AM 6

Q. SO EXHIBIT 379, AND LET ME KNOW WHEN YOU ARE THERE. ARE

11:09AM 7

YOU THERE, SIR?

11:09AM 8

A. YES.

11:09AM 9

Q. SO THE TOP E-MAIL IS FROM MR. ADAM SWEENEY TO MR. SUNEEL

11:09AM 10

VENATI, DID I GET THAT NAME RIGHT?

11:09AM 11

A. THAT'S RIGHT.

11:09AM 12

Q. AND YOU ARE ONE OF THE COPIES ON THAT E-MAIL, CORRECT?

11:09AM 13

A. CORRECT.

11:09AM 14

Q. AND THE SUBJECT OF THAT IS QOS, CLI; IS THAT RIGHT?

11:09AM 15

A. THAT'S RIGHT.

11:09AM 16

Q. AND QS, THAT STANDS FOR QUALITY OF SERVICE?

11:09AM 17

A. YES.

11:09AM 18

Q. NOW, THAT TOP LEVEL E-MAIL ATTACHES ANOTHER E-MAIL FROM

11:09AM 19

MR. VENATI; IS THAT RIGHT? IN OTHER WORDS IF YOU FOLLOW THE

11:09AM 20

STRING DOWN YOU WILL SEE ANOTHER E-MAIL FROM MR. VENATI DATED

11:09AM 21

MONDAY PRINCIPAL 18TH 2011?

11:09AM 22

A. YES.

11:09AM 23

Q. AND THE --

11:10AM 24

MR. NELSON: WELL AT THIS POINT, YOUR HONOR, I MOVE

11:10AM 25

INTO EVIDENCE EXHIBIT 379.

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

12:02PM 1 TOP THERE, MR. FISHER, IT WILL HAVE THE FILING DATE OF  
12:02PM 2 JANUARY 22ND, 2003.

12:02PM 3 DO YOU SEE THAT?

12:02PM 4 A. YES.

12:02PM 5 Q. NOW, SIR, I JUST WANT TO LOOK AT A FEW THINGS IN THIS  
12:02PM 6 COMPLAINT.

12:02PM 7 IF YOU LOOK AT THE END OF THE FIRST PARAGRAPH WHICH STARTS  
12:03PM 8 ON PAGE 2. YOU WILL SEE IT SAYS, DEFENDANTS HAVE COPIED  
12:03PM 9 CISCO'S PATENTED TECHNOLOGIES, THEY HAVE COPIED THE COPYRIGHTED  
12:03PM 10 USER INTERFACE FOR CISCO'S ROUTERS AND THEY HAVE MADE VERBATIM  
12:03PM 11 COPIES OF WHOLE PORTIONS OF CISCO'S USER'S MANUALS, AND THERE  
12:03PM 12 IS OVERWHELMING EVIDENCE THAT THEY HAVE UNLAWFULLY GAINED  
12:03PM 13 ACCESS TO CISCO'S SOURCE CODE AND COPIED IT AS A BASIS FOR THE  
12:03PM 14 OPERATING SYSTEM FOR THEIR KNOCK-OFF ROUTER, CORRECT?

12:03PM 15 A. CORRECT.

12:03PM 16 Q. THAT WAS A TRUE STATEMENT, CORRECT?

12:03PM 17 A. YES.

12:03PM 18 Q. OKAY. AND SO ONE OF THE CLAIMS THAT WAS BEING MADE IS THAT  
12:03PM 19 THERE WERE PATENTED TECHNOLOGIES THAT WERE BEING INFRINGED,  
12:03PM 20 CORRECT?

12:04PM 21 A. CORRECT.

12:04PM 22 Q. AND ONE OF THE CLAIMS, IN FACT THE SECOND LISTED ONE IS  
12:04PM 23 THAT HUAWEI COPIED THE COPYRIGHTED USER INTERFACE FOR CISCO  
12:04PM 24 ROUTERS, CORRECT?

12:04PM 25 A. YES.

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:16PM 1 HUAWEI WAS TO STOP USING CISCO'S INTELLECTUAL PROPERTY,  
01:16PM 2 CORRECT?  
01:16PM 3 A. YES.  
01:16PM 4 Q. SO -- NOW I THINK YOU SAID BEFORE THE BREAK, I WON'T SAY  
01:16PM 5 THIS MORNING BECAUSE IT COULD HAVE BEEN SHORTLY AFTER NOON, BUT  
01:16PM 6 BEFORE THE BREAK THAT YOU HADN'T SEEN THE COMPLAINT; IS THAT  
01:16PM 7 RIGHT?  
01:16PM 8 A. I HAD NOT.  
01:16PM 9 Q. NOW I WANT TO TAKE YOU, EXHIBIT 250, AND I WANT YOU TO GO  
01:16PM 10 TO PARAGRAPH 11. THIS IS YOUR DECLARATION THAT WAS SWORN UNDER  
01:16PM 11 PENALTY OF PERJURY, SIR. AND IF WE BLOW UP PARAGRAPH 11, IT  
01:17PM 12 SAYS, AS DETAILED IN CISCO'S COMPLAINT, HUAWEI HAS ENGAGED IN  
01:17PM 13 WHOLESALE THEFT AND COPYING OF CISCO'S INTELLECTUAL PROPERTY TO  
01:17PM 14 DEVELOP ITS QUIDWAY ROUTERS. ACCORDING TO CISCO'S ALLEGATIONS,  
01:17PM 15 THAT THEFT INCLUDING THE ADOPTION OF CISCO'S PATENTED  
01:17PM 16 PROCESSES, THE UNLAWFUL ACCESS TO AND COPYING OF CISCO'S  
01:17PM 17 PROPRIETARY IOS SOURCE CODE, THE COPING OF CISCO'S CLI AND THE  
01:17PM 18 COPYING OF CISCO'S COPYRIGHTED USER MANUALS.  
01:17PM 19 DO YOU SEE THAT, SIR?  
01:17PM 20 A. YES, I DO.  
01:17PM 21 Q. SO IF WE GO BACK TO PARAGRAPH 1 OF YOUR DECLARATION, THAT  
01:17PM 22 SAYS UNEQUIVOCALLY SIR, I HAVE PERSONAL KNOWLEDGE OF THE FACTS  
01:17PM 23 SET FORTH IN THIS DECLARATION, AND IF CALLED TO TESTIFY AS A  
01:18PM 24 WITNESS, COULD AND WOULD COMPETENTLY TESTIFY TO THEM UNDER  
01:18PM 25 OATH, CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:15PM 1 A. YES.

02:15PM 2 Q. AND THEN AFTER TAKING ABOUT A MONTH OFF, YOU JOINED ARISTA,

02:15PM 3 AND WHEN DID YOU JOIN ARISTA?

02:15PM 4 A. IT WOULD HAVE BEEN IN NOVEMBER 2011.

02:16PM 5 Q. 2011?

02:16PM 6 A. YES.

02:16PM 7 Q. SO WHEN YOU WENT TO ARISTA DIRECTLY FROM CISCO, YOU STARTED

02:16PM 8 TO WORK ON ARISTA'S ETHERNET SWITCHES, CORRECT?

02:16PM 9 A. THAT'S WHAT ARISTA BUILDS, YES.

02:16PM 10 Q. AND THAT'S WHAT ARISTA BUILDS. AND THOSE ARISTA ETHERNET

02:16PM 11 SWITCHES ALSO COMPETE FOR DATA CENTER CUSTOMERS, CORRECT?

02:16PM 12 A. THEY DO, YEAH.

02:16PM 13 Q. SO THERE'S DIRECT COMPETITION, YOU UNDERSTAND BETWEEN THE

02:16PM 14 ARISTA ETHERNET SWITCHES THAT YOU WORKED ON VERSUS THE NEXUS

02:16PM 15 LINE OF ETHERNET SWITCHES YOU WORKED ON AT CISCO, CORRECT?

02:16PM 16 A. SURE.

02:16PM 17 Q. AND WHEN YOU FIRST JOINED ARISTA, YOU DIDN'T RECEIVE ANY

02:16PM 18 TRAINING ABOUT CONFIDENTIAL INFORMATION AND PROPRIETARY

02:16PM 19 INFORMATION, CORRECT?

02:16PM 20 A. IT'S POSSIBLE I DID. I MEAN, IT'S WELL UNDERSTOOD, THE

02:16PM 21 PRINCIPLES OF CONFIDENTIALITY.

02:16PM 22 Q. SIR, AT YOUR DEPOSITION YOU SAID, I DON'T THINK I RECEIVED

02:16PM 23 ANY TRAINING?

02:16PM 24 A. I THINK I SAID I WASN'T SURE.

02:16PM 25 Q. LET'S TAKE A LOOK AT WHAT YOU SAID. AND YOU HAVE A COPY OF

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:23PM 1 COME UP WITH A PARTICULAR COMMAND EXPRESSION FOR A  
02:23PM 2 FUNCTIONALITY AND THAT WOULD BE HIS OR HER PREFERENCE FOR THAT,  
02:23PM 3 CORRECT?

02:23PM 4 A. I GUESS SO.

02:23PM 5 Q. OKAY. AND YOU KNOW FROM YOUR EXPERIENCE THAT DIFFERENT  
02:23PM 6 ENGINEERS CAN HAVE DIFFERENT OPINIONS ON HOW TO EXPRESS CERTAIN  
02:23PM 7 COMMANDS, CORRECT?

02:23PM 8 A. SURE.

02:23PM 9 Q. AND YOU'VE HAD YOUR OPINIONS AND OTHER PEOPLE HAD THEIR  
02:23PM 10 DIFFERENT OPINIONS ON HOW TO EXPRESS A PARTICULAR COMMAND  
02:23PM 11 EXPRESSION WHILE YOU WERE EMPLOYED BY CISCO; IS THAT RIGHT?

02:23PM 12 A. THAT'S RIGHT.

02:23PM 13 Q. AND WHEN YOU WERE HAVING THESE DIFFERENT OPINIONS, THOSE  
02:23PM 14 WERE YOUR PERSONAL OPINIONS AND PREFERENCES FOR HOW A CLI  
02:23PM 15 COMMAND EXPRESSION SHOULD BE EXPRESSED, AND YOU EXPRESSED THOSE  
02:23PM 16 OPINIONS TO YOUR COLLEAGUES AT CISCO, CORRECT?

02:23PM 17 A. I PROBABLY DID, YEAH.

02:23PM 18 Q. AND YOU WOULD AGREE WITH ME THAT TWO ENGINEERS COULD SIT  
02:23PM 19 DOWN AND PROPOSE TWO VERY DIFFERENT COMMANDS FOR ANY PARTICULAR  
02:24PM 20 FUNCTION, CORRECT?

02:24PM 21 A. SURE.

02:24PM 22 Q. FOR EXAMPLE IT'S POSSIBLE FOR AN ENGINEER TO SIT DOWN AND  
02:24PM 23 PICK THE WORD DISPLAY INSTEAD OF THE WORD SHOW FOR THE EXACT  
02:24PM 24 TAME FUNCTIONALITY, IS THAT TRUE?

02:24PM 25 A. IT'S POSSIBLE. IT'S UNLIKELY, BUT IT'S POSSIBLE.



DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:24PM 1 Q. IT'S POSSIBLE, ISN'T IT SIR?

02:24PM 2 A. IT'S POSSIBLE.

02:24PM 3 Q. THERE'S NO TECHNICAL REASON WHY YOU COULDN'T CHOOSE ONE OR

02:24PM 4 THE OTHER; ISN'T THAT TRUE?

02:24PM 5 A. IT'S JUST A WORD.

02:24PM 6 Q. IT'S JUST A WORD CHOICE, CORRECT? IS THAT RIGHT? YES? WE

02:24PM 7 NEED AN AUDITORY ANSWER.

02:24PM 8 A. IT'S JUST A WORD, YES.

02:24PM 9 Q. AN ENGINEER COULD PICK "VISUALIZE" RATHER THAN "SHOW;"

02:24PM 10 ISN'T THAT TRUE?

02:24PM 11 A. IT'S POSSIBLE.

02:24PM 12 Q. IT'S ANOTHER WORD CHOICE, CORRECT?

02:24PM 13 A. YES.

02:24PM 14 Q. YOU COULD CHOOSE ANY WORD FOR ANY COMMAND; ISN'T THAT

02:24PM 15 RIGHT?

02:24PM 16 A. I THINK IF WE WERE TO USE YOUR EXAMPLE, THERE WERE ALREADY

02:24PM 17 THOUSANDS OF COMMANDS USING THE WORD SHOW, SO IT MADE LOGICAL

02:24PM 18 SENSE TO USE IF YOU DID NOT USE "DISPLAY," FOR EXAMPLE, WHEN

02:24PM 19 "SHOW" IS ALREADY THE COMMONLY USED WORD.

02:25PM 20 Q. RIGHT. BECAUSE THAT WAS -- CISCO HAD ALREADY USED "SHOW"

02:25PM 21 AS THE COMMONLY USED WORDING TO BE CONSISTENT WITH CISCO'S

02:25PM 22 CHOICE OF "SHOW," THAT'S WHAT YOU ARE TALKING ABOUT, CORRECT?

02:25PM 23 A. SURE. I THINK CISCO DEVICES USED "SHOW," YEAH.

02:25PM 24 Q. AND SO IF YOU ARE DESIGNING A CISCO CLI COMMAND, YOU WANT

02:25PM 25 TO BE CONSISTENT WITH PRIOR CHOICES MADE BY OTHER CISCO

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:25PM 1 ENGINEERS, THAT'S ONE OF THE DESIGN OBJECTIVES, CORRECT?

02:25PM 2 A. SURE.

02:25PM 3 Q. OKAY. BUT SETTING ASIDE, YOU ARE NO LONGER WORKING AT

02:25PM 4 CISCO, IF YOU WERE WORKING AT ANY COMPANY, YOU COULD CHOOSE ANY

02:25PM 5 WORD FOR ANY COMMAND; IS THAT TRUE?

02:25PM 6 A. SURE, OKAY.

02:25PM 7 Q. IT'S JUST A WORD CHOICE, CORRECT?

02:25PM 8 A. UH-HUH.

02:25PM 9 Q. THAT'S SUBJECTIVE, RIGHT?

02:25PM 10 A. IT IS SUBJECTIVE BUT I THINK THERE'S MANY FACTORS THAT GO

02:25PM 11 INTO DECIDING COMMANDS THEMSELVES.

02:25PM 12 Q. BUT ULTIMATELY, SIR, THAT'S A PROFESSIONAL JUDGMENT CALL BY

02:25PM 13 AN ENGINEER; ISN'T THAT TRUE?

02:25PM 14 A. SURE.

02:25PM 15 Q. NOW I WANT TO SWITCH GEARS AND TALK ABOUT YOUR TENURE AT

02:25PM 16 ARISTA.

02:26PM 17 SO YOU LEAVE CISCO, NOW YOU ARE AT ARISTA, AND PART OF YOUR

02:26PM 18 JOB RESPONSIBILITY WAS TALK TO ARISTA CUSTOMERS ABOUT ARISTA'S

02:26PM 19 PRODUCTS, CORRECT?

02:26PM 20 A. THAT'S CORRECT.

02:26PM 21 Q. AND I BELIEVE -- WHAT WAS YOUR TITLE AT ARISTA?

02:26PM 22 A. I FORGOT WHAT MY INITIAL TITLE WAS, BUT AT ARISTA MY FINAL

02:26PM 23 TITLE WAS DISTINGUISHED ENGINEER AS WELL.

02:26PM 24 Q. OKAY. SO THAT'S A COMPARABLE TITLE AT ARISTA COMPARED TO

02:26PM 25 THE TITLE YOU HELD AT CISCO; IS THAT CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:26PM 1 A. THAT'S CORRECT.

02:26PM 2 Q. AND AGAIN, THAT WOULD BE AN ENGINEER OF DISTINCTION AT

02:26PM 3 ARISTA, CORRECT?

02:26PM 4 A. I GUESS SO.

02:26PM 5 Q. WHEN YOU WERE AT ARISTA, YOU POINTED OUT TO POTENTIAL

02:26PM 6 CUSTOMERS THAT ARISTA'S USER INTERFACE IS JUST LIKE CISCO'S;

02:26PM 7 ISN'T THAT TRUE?

02:26PM 8 A. SURE, YEAH.

02:26PM 9 Q. YOU SAID THAT TO MANY CUSTOMERS, DIDN'T YOU?

02:26PM 10 A. IT'S LIKELY I DID.

02:26PM 11 Q. OKAY. AND YOU ALSO TOLD THOSE SAME CUSTOMERS THAT THEY CAN

02:27PM 12 SAVE RE-TRAINING COSTS AND THEY CAN EASILY ADOPT ARISTA'S

02:27PM 13 NETWORKING EQUIPMENT BECAUSE IT HAS THE SAME USER INTERFACE AS

02:27PM 14 CISCO'S, ISN'T THAT RIGHT?

02:27PM 15 A. THAT'S CORRECT.

02:27PM 16 Q. AND TAKE A LOOK AT, SIR, EXHIBIT 176 IN YOUR BINDER.

02:27PM 17 THIS WAS AN E-MAIL THAT WAS SENT FROM MR. DAVID MCLEOD, TO

02:27PM 18 YOU, MR. DALE, ON OCTOBER 9TH, 2012, WHILE YOU WERE EMPLOYED AT

02:27PM 19 ARISTA NETWORKS, CORRECT?

02:27PM 20 A. THAT'S CORRECT.

02:27PM 21 MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE

02:27PM 22 EXHIBIT 176 INTO EVIDENCE.

02:27PM 23 MR. SILBERT: NO OBJECTION.

02:27PM 24 THE COURT: IT WILL BE ADMITTED.

02:27PM 25

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:27PM 1 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 176, HAVING BEEN  
02:27PM 2 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO  
02:27PM 3 EVIDENCE.)

02:27PM 4 BY MR. PAK:

02:27PM 5 Q. SO LET'S TAKE A LOOK AT THE PAGE, THE SECOND PAGE, WHICH  
02:27PM 6 HAS THE BATES NUMBER 803, AND WHO WAS MR. MCLEOD AT ARISTA?

02:28PM 7 A. SO DAVID, PER HIS TITLE HERE, WAS SALES SOUTHERN REGION  
02:28PM 8 AUSTRALIA, NEW ZEALAND.

02:28PM 9 Q. OKAY. AND YOU WORKED REGULARLY WITH MR. MCLEOD, CORRECT?

02:28PM 10 A. I DID, YES.

02:28PM 11 Q. AND BOTH OF YOU WERE TRYING TO SELL ARISTA EQUIPMENT TO  
02:28PM 12 POTENTIAL CUSTOMERS, CORRECT?

02:28PM 13 A. THAT'S CORRECT.

02:28PM 14 Q. SO LET'S TAKE A LOOK AT THE TOP PARAGRAPH. WHAT MR. MCLEOD  
02:28PM 15 WROTE IS, IN A QUICK SUMMARY OF OUR VALUE/DIFFERENTIATION, IF  
02:28PM 16 YOU ARE LOOKING TO SIMPLIFY OUR NETWORK DESIGN, FUTURE PROOF  
02:28PM 17 FOR NEW SERVICES AND REDUCE CAPEX/OPEX OUR SOLUTIONS CAN HELP  
02:28PM 18 IN A STORAGE CLOUD ENVIRONMENT.

02:28PM 19 AND CAPEX/OPEX, THOSE ARE EXPENDITURES, CAPITAL  
02:29PM 20 EXPENDITURE, OPERATIONAL EXPENDITURE; IS THAT RIGHT?

02:29PM 21 A. I THINK THAT'S FAIR.

02:29PM 22 Q. AND WHAT HE SAYS NEXT IS, ADD IN A CLI IDENTICAL TO CISCO  
02:29PM 23 IOS AND WE MAKE IT SIMPLE TO TRANSITION OPERATIONALLY.

02:29PM 24 THAT WAS CONSISTENT WITH YOUR UNDERSTANDING OF ARISTA'S  
02:29PM 25 MARKETING PITCH, CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:29PM 1 A. TYPICALLY, I DON'T THINK MARKETING INVOLVED TALKING ABOUT  
02:29PM 2 THE COMMAND LINE, IT GENERALLY WASN'T A MAIN SELLING POINT.

02:29PM 3 THAT SAID, FOR SOME CUSTOMERS, WHO MIGHT HAVE BEEN TRAINED  
02:29PM 4 ON OTHER DEVICES, IT MIGHT HAVE BEEN IMPORTANT.

02:29PM 5 Q. YOU DON'T DISPUTE THAT ARISTA PEOPLE TALKED TO CUSTOMERS  
02:29PM 6 AND SAID THESE VERY SAME THINGS, ADD IN A CLI IDENTICAL TO  
02:29PM 7 CISCO IOS AND WE IT MAKE IT SIMPLE TO TRANSITION EXISTING CISCO  
02:29PM 8 CUSTOMERS TO ARISTA CUSTOMERS, CORRECT?

02:29PM 9 A. SURE.

02:29PM 10 Q. YOU SAID THOSE THINGS, CORRECT?

02:29PM 11 A. I DON'T KNOW IF I USED THOSE EXACT WORDS, BUT SURE.

02:29PM 12 Q. OKAY. AND YOU KNOW OTHER PEOPLE AT ARISTA USED SIMILAR  
02:30PM 13 WORDS TO CONVEY THE SAME MESSAGE, CORRECT?

02:30PM 14 A. YES, IT'S POSSIBLE.

02:30PM 15 Q. AND AS WE DISCUSSED EARLIER, PART OF YOUR JOB AT ARISTA WAS  
02:30PM 16 TO GIVE THESE PRESENTATIONS TO INDUSTRY CONFERENCES ABOUT  
02:30PM 17 ARISTA'S PRODUCTS, CORRECT?

02:30PM 18 A. THAT'S CORRECT.

02:30PM 19 Q. AND WHEN YOU PRESENTED AT INDUSTRY CONFERENCES TALKING  
02:30PM 20 ABOUT ARISTA PRODUCTS AS A DISTINGUISHED ENGINEER, YOU KNEW IT  
02:30PM 21 WAS IMPORTANT TO MAKE SURE THAT YOU WERE PRESENTING ACCURATELY,  
02:30PM 22 CORRECT?

02:30PM 23 A. I LIKE TO BE ACCURATE, YES.

02:30PM 24 Q. YOU KNOW IT WAS IMPORTANT, CORRECT?

02:30PM 25 A. SURE.

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:34PM 1 MR. PAK: NO, WE ARE STARTING FROM 21 MINUTES INTO  
02:34PM 2 THE VIDEO.

02:34PM 3 THE COURT: WE CAN LISTEN TO 21 MINUTES, I JUST  
02:34PM 4 WANTED TO KNOW IF I HEARD YOU RIGHT.

02:34PM 5 MR. PAK: I WOULDN'T DO THAT TO US.

02:34PM 6 (WHEREUPON, A VIDEO WAS PLAYED IN OPEN COURT.)

02:34PM 7 Q. I WANT TO GO BACK AND PLAY IT ONE MORE TIME, MR. FISHER.

02:34PM 8 AND THEN MR. FISHER, IF WE COULD BACK UP THERE AND IF YOU  
02:34PM 9 COULD PAUSE AT THE LAST FRAME.

02:35PM 10 I WANT TO ASK MR. -- SO AGAIN, MR. DALE, THAT WAS YOU?

02:35PM 11 A. IT'S ME.

02:35PM 12 Q. OKAY. AND AT THE TOP IT SAYS EOS INDUSTRY STANDARD CLI,  
02:35PM 13 CORRECT?

02:35PM 14 A. THAT'S RIGHT.

02:35PM 15 Q. AND THEN ON THE LEFT-HAND SIDE IT SAYS, COMMON CLI TOOLS  
02:35PM 16 AND WHAT YOU WROTE IN THIS INDUSTRY PRESENTATION IS ARISTA'S  
02:35PM 17 CLI COMMANDS, SAME AS CISCO IOS, THAT'S WHAT YOU WROTE AND  
02:35PM 18 PRESENTED, CORRECT?

02:35PM 19 A. THAT'S WHAT'S IN THAT SLIDE.

02:35PM 20 Q. AND IF YOU LOOK CAREFULLY SIR AT THE SCREEN, YOU WILL SEE  
02:35PM 21 THAT THERE'S A SCREEN OUTPUT; IS THAT CORRECT?

02:35PM 22 A. THAT'S RIGHT.

02:35PM 23 Q. AND WHAT YOU ARE ACTUALLY SHOWING IS A SCREEN SNAPSHOT OF  
02:35PM 24 AN ARISTA SWITCH RUNNING SOME COMMANDS AND SCREEN OUTPUTS FROM  
02:35PM 25 THAT SWITCH; IS THAT CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:35PM 1

A. THAT'S RIGHT.

02:36PM 2

Q. AND YOU WERE DISPLAYING THIS TO THE INDUSTRY PARTICIPANTS

02:36PM 3

SO THEY COULD SEE THAT WHAT YOU WOULD TYPE IN TO AN ARISTA

02:36PM 4

SWITCH AND GET BACK WOULD BE, IN YOUR WORDS, SAME AS CISCO IOS,

02:36PM 5

CORRECT?

02:36PM 6

A. THAT'S RIGHT.

02:36PM 7

Q. SO IF YOU LOOK HERE, YOU CAN SEE THAT THERE ARE A COUPLE OF

02:36PM 8

COMMANDS, ONE OF THE COMMANDS IS SWITCHPORT ACCESS VLAN.

02:36PM 9

THAT'S ABOUT FIVE LINES IN, CAN YOU SEE THAT?

02:36PM 10

A. I SEE THAT.

02:36PM 11

Q. SO ONE OF THE COMMANDS THAT YOU WERE DEMONSTRATING TO THE

02:36PM 12

INDUSTRY WAS THE COMMAND SWITCHPORT ACCESS VLAN, AND THEN YOU

02:36PM 13

SHOW THE OUTPUT OF THAT COMMAND, CORRECT?

02:36PM 14

A. THAT'S CORRECT. IT'S INTERESTING, I DON'T THINK A CISCO

02:36PM 15

DEVICE WOULD HAVE THAT SAME OUTPUT.

02:36PM 16

Q. BUT YOU KNOW THAT CISCO DEVICES HAVE THE SAME COMMANDS?

02:36PM 17

A. SURE, IT'S THE SAME COMMAND.

02:36PM 18

Q. YEAH. YOU KNOW AND THAT'S ONE OF THE COMMANDS THAT'S AT

02:36PM 19

ISSUE IN THIS CASE?

02:36PM 20

A. SURE, YEAH.

02:36PM 21

Q. I WANT TO INTRODUCE INTO EVIDENCE NOW, IF YOU LOOK AT

02:37PM 22

EXHIBIT 165.

02:37PM 23

CAN YOU CONFIRM THAT THIS IS THE SAME POWERPOINT THAT YOU

02:37PM 24

PRESENTED IN POWERPOINT FORMAT AT THE INDUSTRY CONFERENCE VIDEO

02:37PM 25

THAT WE LOOKED AT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:37PM 1 A. IT CERTAINLY LOOKS TO BE THE SAME.

02:37PM 2 MR. PAK: OKAY. AND YOUR HONOR, I WOULD LIKE TO MOVE  
02:37PM 3 EXHIBIT 165 INTO EVIDENCE.

02:37PM 4 MR. SILBERT: NO OBJECTION.

02:37PM 5 THE COURT: IT WILL BE ADMITTED.

02:37PM 6 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 165, HAVING BEEN  
02:37PM 7 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO  
02:37PM 8 EVIDENCE.)

02:37PM 9 BY MR. PAK:

02:37PM 10 Q. AND IF WE COULD JUST PORTRAY THE FIRST SCREEN. THAT'S YOUR  
02:37PM 11 NAME THERE, LINCOLN DALE.

02:37PM 12 A. IT IS, YES.

02:37PM 13 Q. AND IF WE TURN TO SLIDE 38, IT'S CUT OFF A LITTLE BIT BUT  
02:37PM 14 YOU CAN SEE IT'S GOT THE INDUSTRY STANDARD CLI, ARISTA CLI  
02:37PM 15 COMMAND SAME AS CISCO IOS, CORRECT?

02:37PM 16 A. YEAH, IT'S CUT OFF, BUT I'M SURE THAT'S WHAT IT SAYS.

02:38PM 17 Q. OKAY. AND LET'S TAKE A LOOK AT ONE MORE DOCUMENT. THIS IS  
02:38PM 18 EXHIBIT 169. CAN YOU CONFIRM THAT THIS IS A DOCUMENT THAT YOU  
02:38PM 19 CREATED AS WELL?

02:38PM 20 A. IT'S POSSIBLE, I CERTAINLY CREATED SOME OF IT, MAYBE NOT  
02:38PM 21 ALL OF IT, BUT SURE.

02:38PM 22 Q. YES. I THINK THERE IS A SCREEN SNAPSHOT WHERE IT SAYS  
02:38PM 23 LINCOLN-DALE-S-MACBOOK. DID YOU HAVE A MACBOOK AT ARISTA?

02:38PM 24 A. I DID, YES.

02:38PM 25 Q. OKAY. DO YOU HAVE ANY REASON TO DISPUTE THAT THIS CAME,



DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:39PM 1 FOR EXAMPLE, THAT WOULD BE AT SLIDE -- THE BATES NUMBER 773, IF  
02:39PM 2 YOU LOOK AT THE TOP OF THAT IN YOUR BINDER YOU WILL SEE LINCOLN  
02:39PM 3 DALE MACBOOK. DO YOU SEE THAT ENTRY?

02:39PM 4 A. YEAH, I'M NOT SURE WHAT THE QUESTION IS.

02:39PM 5 Q. IS THIS A DOCUMENT THAT CAME FROM YOUR FILES?

02:39PM 6 A. IT LOOKS LIKE IT COULD, SURE.

02:39PM 7 MR. PAK: AND YOUR HONOR, AT THIS POINT I DON'T THINK  
02:39PM 8 THERE'S AN OBJECTION. I WOULD LIKE TO MOVE THIS DOCUMENT INTO  
02:39PM 9 EVIDENCE AS WELL.

02:39PM 10 MR. SILBERT: NO OBJECTION.

02:39PM 11 THE COURT: IT WILL BE ADMITTED.

02:39PM 12 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 169, HAVING BEEN  
02:39PM 13 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO  
02:39PM 14 EVIDENCE.)

02:39PM 15 BY MR. PAK:

02:39PM 16 Q. SO IF WE TAKE A LOOK AT THIS DOCUMENT, IT'S A SIMILAR  
02:39PM 17 DOCUMENT, IT'S GOT ARISTA REINVENTING DATA CENTER SWITCHING.

02:39PM 18 IF WE JUMP TO THE PAGE ENDING IN 773. THIS IS INTERESTING,  
02:39PM 19 SO THIS DOCUMENT THAT YOU ALSO CREATED HAS EOS AT THE TOP, BUT  
02:39PM 20 INSTEAD OF INDUSTRY STANDARD CLI IT SAYS OPERATIONAL CLI,  
02:40PM 21 DOESN'T IT?

02:40PM 22 A. IT DOES.

02:40PM 23 Q. AND ON THE BOTTOM AT THE LEFT-HAND SIDE IT SAYS ARISTA CLI  
02:40PM 24 COMMANDS SAME AS CISCO IOS, CORRECT?

02:40PM 25 A. IT DOES, YES.

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:45PM 1 Q. AND HERE YOU RIGHT, HI ARIFF, THAT SOUNDS LIKE AN EXCUSE TO  
02:45PM 2 ME. AMAZON USES JUNIPER'S NET CONF AND ARE HAPPY WITH THAT.  
02:45PM 3 BUT ON THE CISCO N7K'S, THAT FRONT END, THE JUNIPER MPLS SIDE  
02:46PM 4 OF THINGS, THEY USE CLI OVER SSH, EXPECT AND THAT IS THE PLACE  
02:46PM 5 IN THE NETWORK THAT IT WOULD BE APPLICABLE TO, NOT THE MPLS  
02:46PM 6 JUNIPER SIDE, CORRECT?

02:46PM 7 A. SURE, YEAH.

02:46PM 8 Q. SO WHAT YOU WERE TALKING ABOUT HERE IS A SALES OPPORTUNITY  
02:46PM 9 TO AMAZON; IS THAT CORRECT?

02:46PM 10 A. YEAH.

02:46PM 11 Q. OKAY. WHAT YOU WERE SAYING IS THAT AMAZON USES SOME  
02:46PM 12 JUNIPER ROUTER EQUIPMENT ON THE BACK END, CORRECT?

02:46PM 13 A. YEP.

02:46PM 14 Q. BUT WHAT AMAZON WAS USING WAS CISCO NEXUS 7000 PRODUCTS ON  
02:46PM 15 THE FRONT END, CORRECT?

02:46PM 16 A. THAT'S CORRECT.

02:46PM 17 Q. SO YOU WERE POINTING OUT THAT WE WERE COMPETING FOR THE  
02:46PM 18 OPPORTUNITY TO REPLACE CISCO ON THE FRONT END, CORRECT?

02:46PM 19 A. YEAH.

02:46PM 20 Q. AND WHAT YOU SAID IS, "WE WOULD BE A PRACTICAL DROP-IN  
02:46PM 21 REPLACEMENT FOR THE CISCO, GIVEN THE 99.999 PERCENT SIMILARITY  
02:47PM 22 IN THE CLI."

02:47PM 23 THAT'S WHAT YOU WROTE, CORRECT?

02:47PM 24 A. THAT'S WHAT I WROTE.

02:47PM 25 MR. PAK: AT THIS POINT, YOUR HONOR, I WOULD LIKE TO

REDIRECT EXAMINATION OF MR. DALE BY MR. PAK

03:21PM 1 GROUPED TOGETHER, OR AT LEAST THAT'S HOW PEOPLE WOULD SEE  
03:21PM 2 COMMANDS.

03:21PM 3 SO IF I WAS TO GIVE AN EXAMPLE, SHOW LIKE THE ROUTE FOR  
03:21PM 4 EXAMPLE, SHOW MEANS THAT YOU WANT TO SEE SOMETHING IN THE  
03:21PM 5 OPERATION. IP, BECAUSE IT'S RELATED TO TCP IP AND THEN ROUTE  
03:21PM 6 BECAUSE IT'S RELATED TO A ROUTE TABLE OR A ROUTE.

03:21PM 7 MR. SILBERT: OKAY. THANK YOU VERY MUCH.

03:21PM 8 NO FURTHER QUESTIONS.

03:21PM 9 THE COURT: THANK YOU, REDIRECT FOR THIS WITNESS?

03:21PM 10 MR. PAK: YES, VERY BRIEF, YOUR HONOR.

03:21PM 11

03:21PM 12 **REDIRECT EXAMINATION BY MR. PAK**

03:21PM 13

03:21PM 14 BY MR. PAK:

03:21PM 15 Q. MR. DALE, ONE OF THE THINGS THAT MR. SILBERT ASKED YOU  
03:21PM 16 ABOUT WERE SOME OF THE OTHER THINGS THAT YOU TOLD CUSTOMERS  
03:21PM 17 WITH RESPECT TO ARISTA SWITCHES, CORRECT?

03:21PM 18 A. YES.

03:21PM 19 Q. BUT ONE OF THE THINGS YOU DID TELL ARISTA'S CUSTOMERS ABOUT  
03:21PM 20 YOUR SWITCHES THAT WAS IT HAD A CLI THAT WAS THE SAME AS CISCO  
03:22PM 21 CLI, CORRECT?

03:22PM 22 A. YES.

03:22PM 23 Q. AND YOU ALSO TALKED BRIEFLY IN YOUR EXAMINATION BY  
03:22PM 24 MR. SILBERT REGARDING OTHER VENDORS AND THEIR USE OF CLI'S; DO  
03:22PM 25 YOU RECALL THAT?

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:39PM 1 RECOGNIZED LEADER IN INTERNET WORKING DEVICE OPERATING SYSTEMS  
03:40PM 2 FOR DECADES CISCO IOS SOFTWARE HAS BEEN THE FOUNDATION FOR  
03:40PM 3 ROUTING AND SWITCHING CONFIGURATION IN ALL ENVIRONMENTS. THE  
03:40PM 4 CISCO IOS CLI HAS ESSENTIALLY BECOME THE STANDARD FOR  
03:40PM 5 CONFIGURATION IN THE NETWORKING INDUSTRY?

03:40PM 6 A. YES.

03:40PM 7 Q. SO ON BEHALF OF CISCO, AND SOMEBODY WHO IS THE CHIEF  
03:40PM 8 ARCHITECT, WHAT DOES CISCO MEAN WHEN YOU USE THE PHRASE, HAS  
03:40PM 9 BECOME THE STANDARD IN DESCRIBING IOS CLI?

03:40PM 10 A. SO WHAT IT DESCRIBES IS THAT CISCO IOS CLI WAS THE BEST, TO  
03:40PM 11 COMPETE AGAINST IT, TO SET THE BAR. ALSO, IT DEFINED A SET OF  
03:40PM 12 PROPERTIES WHICH PEOPLE WERE ALWAYS EXPECTING A LOT OF.

03:40PM 13 Q. DID CISCO, WHEN IT WROTE THESE WORDS, "BECAME THE  
03:40PM 14 STANDARD," WAS IT TELLING THE WORLD THAT ANYONE COULD COME AND  
03:40PM 15 COPY THE CISCO CLI WITHOUT A LICENSE?

03:40PM 16 MR. FERRALL: OBJECTION. FOUNDATION.

03:40PM 17 THE COURT: SUSTAINED.

03:40PM 18 BY MR. PAK:

03:41PM 19 Q. HAVE YOU EVER, IN YOUR EXPERIENCE AT CISCO, HEARD ANYONE  
03:41PM 20 SAY THAT IT WAS CISCO'S POLICY TO ALLOW COMPANIES TO COPY CISCO  
03:41PM 21 CLI WITHOUT A LICENSE?

03:41PM 22 A. I HAVE NOT.

03:41PM 23 Q. DO YOU BELIEVE THAT CISCO CLI IS IMPORTANT TO CISCO'S  
03:41PM 24 BUSINESS?

03:41PM 25 A. YES.

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:41PM 1 Q. LET'S TAKE A LOOK AT ANOTHER DOCUMENT THAT'S ALREADY BEEN  
03:41PM 2 ADMITTED INTO EVIDENCE, YOUR HONOR, THIS IS EXHIBIT 5464. AND  
03:41PM 3 AGAIN AS A COMPANY WITNESS I BELIEVE YOU WERE ASKED ABOUT THIS  
03:41PM 4 DOCUMENT DURING YOUR DEPOSITION?

03:41PM 5 A. YES. THIS DOCUMENT WAS SHOWN TO ME AT MY DEPOSITION.

03:41PM 6 Q. AND THIS IS, IF WE COULD PULL UP THE QUOTE AT THE TOP,  
03:41PM 7 THERE'S A QUOTE WITH IOS CISCO WAS CREATING ONE FROM MANY AND  
03:41PM 8 THAT'S SOMETHING THAT WE STILL DO TODAY.

03:42PM 9 THAT'S JOEL BION, SENIOR VICE PRESIDENT OF RESEARCH AND  
03:42PM 10 ADVANCED DEVELOPMENT FOR CISCO AT THE TIME, CORRECT?

03:42PM 11 A. YES.

03:42PM 12 Q. YOU KNOW MR. BION, CORRECT?

03:42PM 13 A. YES.

03:42PM 14 Q. OKAY. AND YOU'VE WORKED WITH HIM A NUMBER OF YEARS AT  
03:42PM 15 CISCO?

03:42PM 16 A. YES.

03:42PM 17 Q. OKAY. JUST TO BE CLEAR, IS THIS THE FINAL PRESS RELEASE  
03:42PM 18 THAT WENT OUT TO THE PUBLIC OR WAS IT A DRAFT VERSION?

03:42PM 19 A. THIS WAS THE DRAFT VERSION WHICH WAS CIRCULATED INTERNALLY  
03:42PM 20 FOR PEOPLE TO COMMENT ON.

03:42PM 21 Q. AS FAR AS YOU KNOW WAS THIS DOCUMENT EVER SHARED WITH THE  
03:42PM 22 PUBLIC?

03:42PM 23 A. THE FINAL PRESS RELEASE WAS SHARED WITH THE PUBLIC BUT NOT  
03:42PM 24 THE DRAFT DOCUMENT.

03:42PM 25 Q. OKAY. WE WILL GET TO THE FINAL PRESS RELEASE.

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:42PM 1 SO LOOKING JUST AT THE DRAFT RELEASE, I THINK YOU WERE ALSO  
03:42PM 2 ASKED ABOUT THIS AT YOUR DEPOSITION. IF YOU COULD GO TO  
03:42PM 3 "TRANSFORMING AN INDUSTRY, THE DRAFT PRESS RELEASE STATED."

03:42PM 4 ONE OF IOS'S LEGACIES WAS ESTABLISHING AN INDUSTRY STANDARD  
03:42PM 5 FOR HOW PEOPLE INTERFACE WITH ROUTERS AND SWITCHES KNOWN AS THE  
03:43PM 6 COMMAND LANGUAGE INTERFACE OR CLI, CORRECT?

03:43PM 7 A. YES.

03:43PM 8 Q. AND AGAIN, ON BEHALF OF CISCO, CAN YOU EXPLAIN WHAT WAS  
03:43PM 9 MEANT IN THIS LANGUAGE WHEN IT SAYS, KNOWN AS THE COMMAND  
03:43PM 10 LANGUAGE INTERFACE CLI BECOMING OR ESTABLISHING INDUSTRY  
03:43PM 11 STANDARD FOR HOW PEOPLE INTERFACE WITH ROUTERS AND SWITCHES?

03:43PM 12 A. WHAT JOEL WAS SAYING, AGAIN, WAS THAT THE IOS CLI WAS THE  
03:43PM 13 BEST OF BREED, SOMETHING TO COMPETE AGAINST.

03:43PM 14 Q. AND AGAIN, IT SAYS HERE, "ANYONE WHO GOES TO CONFIGURE A  
03:43PM 15 COMPETITOR'S PRODUCT FEELS VERY MUCH AT HOME," THAT'S WHAT  
03:43PM 16 MR. BION SAID?

03:43PM 17 A. YES.

03:43PM 18 Q. AND AGAIN, WHAT'S YOUR POSITION ON BEHALF OF CISCO AS TO  
03:43PM 19 WHAT WAS MEANT BY THAT?

03:43PM 20 MR. FERRALL: OBJECTION. FOUNDATION.

03:43PM 21 THE COURT: SUSTAINED.

03:43PM 22 BY MR. PAK:

03:43PM 23 Q. TO YOUR KNOWLEDGE, HAS MR. BION EVER TOLD YOU THAT IT WAS  
03:43PM 24 OKAY FOR OTHER COMPANIES TO COPY CISCO'S CLI?

03:43PM 25 A. NO.

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:44PM 1 Q. LET'S TAKE, ACTUALLY, A LOOK AT THE FINAL PRESS RELEASE  
03:44PM 2 THAT WENT OUT FROM THIS DRAFT, AND THIS IS EXHIBIT 494 IN YOUR  
03:44PM 3 BINDER.

03:44PM 4 AND DO YOU RECOGNIZE THIS DOCUMENT? IT'S 494 IN YOUR  
03:44PM 5 BINDER. WHAT IS THIS DOCUMENT?

03:44PM 6 A. THIS IS A FINAL PRESS RELEASE WHICH WENT OUT.

03:44PM 7 Q. OKAY. AND THE OCCASION FOR THE PRESS RELEASE, WAS THAT THE  
03:44PM 8 25-YEAR CELEBRATION OF CISCO IOS SOFTWARE?

03:44PM 9 A. YES.

03:44PM 10 Q. AND SO LET'S TAKE --

03:44PM 11 MR. PAK: AND AT THIS POINT I WOULD LIKE TO ADMIT  
03:44PM 12 EXHIBIT 494 INTO EVIDENCE.

03:44PM 13 MR. FERRALL: NO OBJECTION.

03:44PM 14 THE COURT: IT WILL BE ADMITTED.

03:44PM 15 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 494, HAVING BEEN  
03:44PM 16 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO  
03:44PM 17 EVIDENCE.)

03:44PM 18 BY MR. PAK:

03:44PM 19 Q. SO NOW LET'S LOOK AT THE SAME PARAGRAPH THAT WE WERE  
03:44PM 20 LOOKING AT BEFORE BUT THIS IS THE VERSION THAT ACTUALLY WENT  
03:45PM 21 OUT TO THE PUBLIC ABOUT THE 25TH ANNIVERSARY OF CISCO IOS.

03:45PM 22 SO IF WE GO BACK TO THE OTHER PAGE, TRANSFORMING AN  
03:45PM 23 INDUSTRY. AND CAN YOU READ INTO THE RECORD WHAT WAS ACTUALLY  
03:45PM 24 SAID IN THE PRESS RELEASE THAT WAS SENT OUT TO THE PUBLIC.

03:45PM 25 A. IT SAYS, "IF THE SUCCESS OF A PRODUCT IS MEASURED BY HOW

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:45PM 1 MUCH IT IS IMITATED, THEN IOS HAS CLEARLY SHOWN ITS STRENGTH.

03:45PM 2 IT SETS THE STANDARD BY WHICH COMPETITIVE PRODUCTS ARE DESIGNED

03:45PM 3 AND EVEN CONFIGURED."

03:45PM 4 Q. AND AGAIN, DO YOU -- HOW DO YOU SEE THE DIFFERENCE, IF ANY,

03:45PM 5 BETWEEN THIS STATEMENT AND WHAT WE SAW BEFORE ABOUT THE

03:45PM 6 INDUSTRY STANDARD LANGUAGE?

03:45PM 7 A. BOTH THESE STATEMENTS ARE SAME, THEY ARE BASICALLY SAYING

03:45PM 8 IOS IS THE BEST OF THE BREED.

03:45PM 9 Q. AND AGAIN, IT SAYS IOS, MR. BION THIS TIME SAYS IOS

03:45PM 10 ESTABLISHED THE CORE ELEMENTS OF THE LANGUAGE OF ROUTER

03:45PM 11 CONFIGURATION; DO YOU SEE THAT?

03:46PM 12 A. YES.

03:46PM 13 Q. WHAT IS YOUR UNDERSTANDING OF THAT STATEMENT?

03:46PM 14 A. I BELIEVE WHAT HE'S TALKING ABOUT IS SOME OF THE BEST

03:46PM 15 FEATURES WHICH ARE CLI ARE TEXT-BASED INTERFACE. AND IOS HAVE

03:46PM 16 ESTABLISHED THOSE FEATURES.

03:46PM 17 Q. WHAT ARE SOME OF THESE FEATURES YOU ARE PERSONALLY FAMILIAR

03:46PM 18 WITH?

03:46PM 19 A. SOME OF THOSE FEATURES, LIKE IF YOU TURN IN THE MIDDLE OF A

03:46PM 20 COMMAND IT WILL SAY, COMMAND COMPLETION, OR IT WILL TELL YOU

03:46PM 21 WHAT POSSIBLE COMMANDS CAN BE ISSUED.

03:46PM 22 Q. NOW WITH -- LET'S SWITCH TO OUR NEXT TOPIC WHICH IS TALKING

03:46PM 23 ABOUT PRODUCTS CISCO MAKES. AND THIS TIME, I BELIEVE WE HAVE A

03:46PM 24 DEMONSTRATIVE FROM MR. KATHAIL. AND IF WE TURN TO SLIDE 1, AT

03:46PM 25 A VERY HIGH LEVEL, CAN YOU EXPLAIN TO THE JURY WHAT TYPES OF



12:20:04

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) DECEMBER 1, 2016  
)  
ARISTA NETWORKS, INC., ) VOLUME 6  
)  
DEFENDANT ) PAGES 1115-1309  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: DAVID A. NELSON  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

FOR THE PLAINTIFF:  
BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

01:29:31 1

USER INTERFACE.

01:29:32 2

Q. AND WHAT OPERATING SYSTEMS ARE THOSE?

01:29:34 3

A. THOSE ARE IOS, IOS XR, IOS XE, AND NX-OS.

01:29:46 4

Q. MR. LANG, IF YOU CAN TURN TO EXHIBIT 4791 IN YOUR BINDER,

01:29:51 5

PLEASE. DO YOU RECOGNIZE EXHIBIT 4791?

01:30:01 6

A. YES, I DO.

01:30:02 7

Q. WHAT IS IT?

01:30:03 8

A. SO THESE ARE THE REGISTRATIONS FOR COPYRIGHTS IN OUR

01:30:07 9

OPERATING SYSTEMS, AND THEIR ASSOCIATED USER INTERFACES.

01:30:10 10

Q. AND ARE THESE KEPT IN YOUR LEGAL DEPARTMENT?

01:30:12 11

A. YES, THEY ARE KEPT WITHIN THE LEGAL DEPARTMENT WITHIN

01:30:15 12

WHICH I AM A VICE PRESIDENT.

01:30:17 13

MR. JAFFE: YOUR HONOR, I SEEK TO MOVE EXHIBIT 4791

01:30:20 14

INTO EVIDENCE.

01:30:22 15

MR. SILBERT: NO OBJECTION.

01:30:23 16

THE COURT: IT WILL BE ADMITTED.

01:30:25 17

(PLAINTIFF'S EXHIBIT 4791 WAS ADMITTED INTO EVIDENCE.)

01:30:25 18

BY MR. JAFFE:

01:30:27 19

Q. MR. LANG, CAN YOU EXPLAIN TO THE JURY HOW EXHIBIT 4791 IS

01:30:31 20

ORGANIZED?

01:30:37 21

A. SURE. IT'S ORGANIZED BY OPERATING SYSTEM. SO THE

01:30:41 22

REGISTRATION FOR VARIOUS VERSIONS OF THE SAME OPERATING SYSTEM

01:30:45 23

ARE GROUPED TOGETHER, IOS, IOS XR, IOS XE, AND NX-OS.

01:30:53 24

Q. AND AGAIN, FOR THIS EXHIBIT, HOW MANY REGISTERED

01:30:57 25

COPYRIGHTS ARE INCLUDED?

01:33:28 1 A. WELL, IT'S QUITE A BIT OF MATERIAL. IT'S A COPYRIGHT  
01:33:33 2 APPLICATION, WHICH IS ESSENTIALLY THE KIND OF DOCUMENT YOU ARE  
01:33:35 3 LOOKING AT BUT WITHOUT THE REGISTRATION THAT WAS ADDED TO IT BY  
01:33:38 4 THE COPYRIGHT OFFICE.

01:33:40 5 BUT THEN ALONG WITH IT, WE SEND A LOT OF THINGS. WE SENT  
01:33:45 6 EXCERPTS OF THE SOURCE CODE, WE SENT A LINK THAT THE COPYRIGHT  
01:33:48 7 OFFICE CAN USE TO ACCESS THE ENTIRE SOURCE CODE, IF THEY WISH,  
01:33:51 8 AND WE ALSO SENT LOTS OF DIFFERENT ITEMS OF DOCUMENTATION THAT  
01:33:55 9 COME WITH THE OPERATING SYSTEM THAT WERE WE ARE ALSO  
01:33:58 10 REGISTERING.

01:33:59 11 Q. CAN YOU PLEASE TURN TO EXHIBIT 4803 IN YOUR WITNESS  
01:34:03 12 BINDER.

01:34:03 13 A. SURE.

01:34:04 14 Q. DO YOU RECOGNIZE EXHIBIT 4803?

01:34:10 15 A. YES. THESE ARE THE MATERIALS THEMSELVES THAT WERE SENT TO  
01:34:16 16 THE COPYRIGHT OFFICE, ALONG WITH AN INDEX TO THEM.

01:34:21 17 Q. AND IS THERE A DEPARTMENT AT CISCO THAT MAINTAINS THESE  
01:34:25 18 DOCUMENTS?

01:34:25 19 A. YES. THEY ARE MAINTAINED WITHIN THE LEGAL DEPARTMENT. WE  
01:34:28 20 KEEP TRACK OF WHAT WE'VE SENT AND MAINTAIN COPIES.

01:34:31 21 Q. SO IS EXHIBIT 4803 TRUE AND CORRECT COPIES OF THE  
01:34:35 22 MATERIALS THAT WERE SUBMITTED WITH THE REGISTERED COPYRIGHTS  
01:34:37 23 THAT WE JUST DISCUSSED?

01:34:38 24 A. YES, IT IS.

01:34:39 25 Q. OKAY.

01:34:41 1 MR. JAFFE: YOUR HONOR, I SEEK TO MOVE INTO EVIDENCE  
01:34:43 2 EXHIBIT 4803.

01:34:44 3 MR. SILBERT: NO OBJECTION.

01:34:45 4 THE COURT: IT WILL BE ADMITTED.

01:34:47 5 (PLAINTIFF'S EXHIBIT 4803, WAS ADMITTED INTO EVIDENCE.)

01:34:47 6 BY MR. JAFFE:

01:34:48 7 Q. IF WE CAN SHOW THE FIRST PAGE OF EXHIBIT 4803, MR. FISHER.  
01:34:52 8 THANK YOU.

01:34:53 9 MR. LANG, CAN YOU PLEASE EXPLAIN WHAT WE ARE LOOKING AT  
01:34:55 10 HERE ON EXHIBIT 4803?

01:34:58 11 A. SURE. SO THIS IS THE INDEX THAT TELLS US WHAT'S IN THIS  
01:35:01 12 EXHIBIT THAT THE VARIOUS ITEMS THAT WERE SENT TO THE COPYRIGHT  
01:35:04 13 OFFICE AND WHERE YOU CAN FIND EACH ITEM.

01:35:08 14 FOR EACH OPERATING SYSTEM IN EACH VERSION, THERE'S A TABLE  
01:35:11 15 THAT LISTS THE ITEMS AND GIVES SOME POINTERS FOR FINDING IT.

01:35:15 16 Q. ALL RIGHT. I WANT TO CHANGE TOPICS A LITTLE BIT.

01:35:23 17 HAS CISCO HAD TO PROTECT ITS INNOVATIONS FROM COPYING IN  
01:35:27 18 THE PAST?

01:35:27 19 A. YES, WE HAVE. IN 2003 WE LEARNED THAT THE -- OR HAD  
01:35:33 20 LEARNED THAT HUAWEI, WHICH IS STILL TODAY, A LARGE CHINESE  
01:35:38 21 MAKER OF INTERNET EQUIPMENT, HAD COPIED SOME OF OUR PRODUCTS.

01:35:43 22 IT COPIED THE COMMAND-LINE INTERFACE. THEY HAD COPIED  
01:35:46 23 DOCUMENTATION, THEY ALSO COPIED SOURCE CODE. WE SUED THEM FOR  
01:35:52 24 PATENT INFRINGEMENT AND COPYRIGHT INFRINGEMENT AND WERE  
01:35:53 25 SUCCESSFUL IN STOPPING THEIR INFRINGEMENT.

01:35:55 1 Q. SO YOU MENTIONED THAT CISCO SUED HUAWEI. DID THAT INCLUDE  
01:35:59 2 FILING A COMPLAINT?

01:36:00 3 A. YES.

01:36:01 4 Q. AND WAS THAT COMPLAINT FILED PUBLICLY?

01:36:04 5 A. YES, IT WAS.

01:36:05 6 Q. IF YOU CAN TURN TO EXHIBIT 4424 IN YOUR WITNESS BINDER,  
01:36:12 7 PLEASE?

01:36:20 8 A. I'M THERE.

01:36:21 9 Q. DO YOU RECOGNIZE WHAT WE'RE LOOKING AT IN EXHIBIT 4424?

01:36:24 10 A. YES, IT'S A COMPENDIUM OF MEDIA COVERAGE THAT WE COLLECTED  
01:36:27 11 ON THE DAY OF OUR LAWSUIT.

01:36:29 12 SO WE NORMALLY FOLLOW MEDIA COVERAGE OF OUR COMPANY AND  
01:36:33 13 KEEP TRACK OF IT, AND WE COLLECTED THESE ARTICLES ABOUT THE  
01:36:37 14 LAWSUIT THAT WE FILED ON THAT DAY, AND WE HAVE MAINTAINED THOSE  
01:36:40 15 IN THE LEGAL DEPARTMENT SINCE THEN.

01:36:41 16 Q. AND IS IT CISCO'S PRACTICE TO MAINTAIN OR COLLECT ACCURATE  
01:36:45 17 COPIES OF THE COVERAGE AS THEY APPEAR?

01:36:47 18 A. YES, IT IS.

01:36:50 19 MR. JAFFE: YOUR HONOR, I SEEK TO MOVE EXHIBIT 4424  
01:36:52 20 INTO EVIDENCE, ALTHOUGH NOT FOR THE TRUTH OF THE MATTER  
01:36:55 21 ASSERTED.

01:36:56 22 MR. SILBERT: ON THOSE GROUNDS, NO OBJECTION.

01:36:58 23 THE COURT: ALL RIGHT. I WILL ADMIT IT.

01:37:00 24 LADIES AND GENTLEMEN, WHEN YOU LOOK AT THIS EXHIBIT YOU  
01:37:01 25 WILL SEE THAT IT IS JUST AS DESCRIBED BY MR. LANG, A SERIES OF

01:37:05 1 PRESS REPORTS.

01:37:06 2 YOU ARE TO CONSIDER THAT THESE ARE PRESS REPORTS, BUT NOT  
01:37:09 3 THE TRUTH OF ANYTHING THAT'S ACTUALLY REPORTED.

01:37:12 4 I'M SURE AS YOU READ THE NEWSPAPER, YOU MAKE THOSE  
01:37:14 5 DECISIONS YOURSELF AS WELL, BUT THIS IS JUST TO SHOW YOU THAT  
01:37:17 6 THESE WERE REPORTS THAT WERE MADE AND NOTHING ELSE.  
01:37:20 7 (PLAINTIFF'S EXHIBIT 4424 WAS ADMITTED INTO EVIDENCE.)

01:37:22 8 MR. JAFFE: THANK YOU.

01:37:22 9 Q. MR. FISHER, IF WE CAN TURN TO PAGE 5 OF THIS EXHIBIT. AND  
01:37:27 10 IN PARTICULAR, I WANT TO FOCUS ON THE BOTTOM HALF HERE.

01:37:30 11 MR. LANG, DO YOU SEE THAT THERE'S AN ARTICLE FROM THE *DOW*  
01:37:37 12 *JONES NEW SERVICE*?

01:37:37 13 A. YES.

01:37:37 14 Q. AND CAN YOU JUST READ THE TITLE OF THAT ARTICLE FOR THE  
01:37:40 15 JURY?

01:37:41 16 A. DJ CISCO PATENT SUIT-2. REPORTS TO HUAWEI'S QUIDWAY  
01:37:47 17 ROUTERS.

01:37:48 18 Q. OKAY. AND COULD YOU PLEASE JUST READ FOR THE JURY THE  
01:37:51 19 FIRST SENTENCE OF THE THIRD PARAGRAPH?

01:37:55 20 A. SURE.

01:37:56 21 "SPECIFICALLY, CISCO IS CLAIMING THAT HUAWEI COPIED  
01:38:00 22 PORTIONS OF CISCO'S IOS SOURCE CODE AND COMMAND-LINE INTERFACE  
01:38:05 23 AND INCLUDED THEM IN HUAWEI'S OPERATING SYSTEM FOR ITS QUIDWAY  
01:38:11 24 ROUTERS AND SWITCHES."

01:38:12 25 Q. ALL RIGHT. IF WE CAN TURN TO PAGE 6 OF THIS EXHIBIT.

02:12:56 1 COULD LOOK AT MORE SOURCE CODE IF APPROXIMATE THEY WANTED TO;  
02:12:59 2 IS THAT RIGHT?

02:12:59 3 A. THERE WAS AN EXCERPT, BUT I DON'T RECALL TESTIFYING TO A  
02:13:02 4 NUMBER OF PAGES, BUT AN EXCERPT WAS SENT, AND THEN A LINK WAS  
02:13:06 5 ALSO SENT.

02:13:06 6 Q. OKAY. AND ANOTHER SUBJECT OR ANOTHER CATEGORY COVERED BY  
02:13:12 7 THOSE REGISTRATIONS ARE MANUALS, RIGHT, PRODUCT MANUALS?

02:13:18 8 A. RIGHT.

02:13:18 9 Q. AND DO YOU KNOW THE VOLUME OF JUST THE PRODUCT MANUALS  
02:13:23 10 THAT ARE COVERED BY THE REGISTRATIONS THAT YOU TESTIFIED ABOUT?

02:13:27 11 A. I DON'T BUT I ASSUME IT'S QUITE LARGE.

02:13:29 12 Q. DO YOU KNOW THAT IT EXCEEDS 600,000 PAGES OF MANUALS?

02:13:34 13 A. I DON'T KNOW THE NUMBER.

02:13:37 14 Q. OKAY. WOULD YOU LOOK, PLEASE, AT EXHIBIT 4791 WHICH IS  
02:13:43 15 THE COMPILATION OF REGISTRATIONS WHICH IS IN EVIDENCE.

02:13:55 16 IF YOU ARE LOOKING ON THE FIRST PAGE, THIS IS FOR CISCO  
02:13:58 17 IOS VERSION 11.0, RIGHT?

02:14:01 18 A. YES.

02:14:02 19 Q. AND IF YOU LOOK ON KIND OF THE TOP -- RIGHT YOU SEE THAT  
02:14:05 20 THIS WAS, THE EFFECTIVE DATE OF THE REGISTRATION IS JUNE 14,  
02:14:10 21 2002?

02:14:10 22 A. YES.

02:14:12 23 Q. AND IF YOU SCROLL A LITTLE BIT DOWN YOU WILL SEE THAT THE  
02:14:15 24 WORK WAS DONE IN 1985 THERE IN SECTION 3-A -- EXCUSE ME, 1995.  
02:14:24 25 THE WORK WAS COMPLETED IN 1995?

02:54:33 1 THE PUBLIC.

02:54:34 2 Q. NOW LET'S GO TO THE FIRST ELEMENT YOU TALKED ABOUT,  
02:54:39 3 MULTIWORD COMMANDS.

02:54:40 4 SO CAN YOU JUST EXPLAIN TO US WHAT MULTIWORD COMMANDS ARE  
02:54:44 5 IN CISCO'S CLI USER INTERFACE?

02:54:49 6 A. SURE. IN TERMS OF THE WORDS MULTIWORD COMMAND, IT'S  
02:54:52 7 PRETTY STRAIGHTFORWARD. IT'S A COMMAND OR AN INSTRUCTION  
02:54:56 8 THAT'S COMPOSED OF MULTIPLE WORDS.

02:54:58 9 AS PART OF THIS DEMONSTRATIVE, THERE'S AN ANIMATION, OR  
02:55:03 10 ACTUALLY I DON'T THINK WE ARE QUITE THERE YET, BUT WHAT YOU  
02:55:07 11 HAVE IS YOU CAN TYPE IN A COMMAND, SO FOR EXAMPLE, THIS ONE IS  
02:55:12 12 SPANNING-TREE, PORTFAST, BPDU FILTER DEFAULT. AND THE USER CAN  
02:55:18 13 TYPE THAT. HIT ENTER, AND THEN IT'S SENT TO THE CISCO SWITCH  
02:55:24 14 AND ROUTER, AND THEN USUALLY A RESPONSE COMES BACK.

02:55:29 15 IN SOME CASES, THE RESPONSE IS A CONFIGURATION EITHER THAT  
02:55:33 16 IT'S ACCEPTED, WHICH MEANS YOU DON'T GET ANY OUTPUT, OR THAT  
02:55:37 17 THERE MIGHT BE AN ERROR OR SOMETHING LIKE THAT.

02:55:40 18 IN OTHER CASES, THERE'S INFORMATION THAT'S RETURNED AS A  
02:55:43 19 RESULT OF THE REQUEST.

02:55:45 20 BUT THE KEY REALLY IS YOU HAVE THIS PROMPT, YOU CAN TYPE  
02:55:47 21 IN CHARACTERS THAT REPRESENT MULTIPLE WORDS, IT'S A COMMAND OR  
02:55:52 22 AN INSTRUCTION, AND THAT CAN BE SENT TO THE SWITCH OR ROUTER.

02:55:55 23 Q. SO THE COMMAND THAT YOU ARE ILLUSTRATING HERE IS  
02:56:00 24 SPANNING-TREE, PORTFAST, BPDU FILTER DEFAULT; DO YOU SEE THAT?

02:56:07 25 A. YES.



02:56:07 1 Q. IS THAT ONE OF THE COMMANDS IN THE CASE?

02:56:09 2 A. IT IS.

02:56:12 3 Q. NOW FROM YOUR ANALYSIS, HOW MANY COMMANDS DID YOU,  
02:56:16 4 MULTIWORD COMMANDS WE ARE TALKING ABOUT NOW, DID YOU DETERMINE  
02:56:19 5 WERE COPIED BY ARISTA?

02:56:22 6 A. 506.

02:56:24 7 Q. SO HERE ON SLIDE 11, CAN YOU TELL ME WHAT'S BEING SHOWN  
02:56:30 8 HERE?

02:56:31 9 A. SURE. THIS IS KIND OF A WORD SALAD OF ALL OF THE  
02:56:35 10 DIFFERENT 506 COMMANDS.

02:56:37 11 IT'S OBVIOUSLY VERY BUSY. I WON'T TRY AND READ THESE.  
02:56:41 12 BUT IT GIVES YOU A SENSE OF THE TYPES OF COMMANDS, THE VARIETY  
02:56:49 13 IN THE WORDS THAT ARE BEING USED.

02:56:51 14 AND THERE'S ALSO SOMETHING HERE WHERE THERE'S COLOR  
02:56:54 15 CODING, AND THE COLOR CODING DEMONSTRATES WHAT'S KIND OF THIS  
02:56:58 16 CONCEPT OF A HIERARCHY.

02:57:00 17 I WILL STOP.

02:57:02 18 Q. SO ARE THERE ANY OF THE COMMANDS THAT YOU'RE AWARE OF THAT  
02:57:05 19 YOU LOOKED AT THAT ARE FOUR OR MORE WORDS?

02:57:08 20 A. YES, IN FACT THERE'S ONE RIGHT HERE, AREA NSSA  
02:57:15 21 DEFAULT-INFORMATION-ORIGINATE. THERE'S ALSO AREA NSSA  
02:57:22 22 TRANSLATE TYPE 7 ALWAYS. THERE CLEARLY ARE MANY COMMANDS HERE  
02:57:29 23 THAT ARE FOUR WORDS OR MORE.

02:57:31 24 Q. NOW, YOU JUST MENTIONED THAT THE COLOR CODING, IT SHOWS A  
02:57:38 25 HIERARCHY OF THE COMMANDS. CAN YOU EXPLAIN WHAT YOU MEAN BY

02:57:42 1 THAT?

02:57:42 2 A. SURE. THIS NEXT DEMONSTRATIVE TAKES AWAY MANY OF THE  
02:57:46 3 OTHER COLORS, SO NOW THERE'S JUST TWO, THERE'S RED AND GREEN.  
02:57:51 4 AND THESE SHOW TWO HIERARCHIES.

02:57:53 5 AND WHAT THE HIERARCHIES ARE IS IT'S AN ORGANIZATION OF  
02:57:57 6 THE COMMANDS INTO A STRUCTURE SO THAT IT'S EASIER FOR AN  
02:58:02 7 OPERATOR TO REMEMBER THEM. IT'S KIND OF A CATEGORIZATION.

02:58:06 8 AND THEY ARE CALLED HIERARCHIES OR TREES. AND THOSE TREES  
02:58:11 9 USUALLY, THE WAY THAT THEY'RE REPRESENTED, IF YOU GO TO THE  
02:58:15 10 NEXT SLIDE, IS AS THIS KIND OF TREE STRUCTURE, WHERE THE ROOT  
02:58:22 11 IS THE FIRST WORD AND THEN THE NEXT WORD IS THE NEXT LEVEL IN  
02:58:26 12 THE HIERARCHY.

02:58:26 13 AND THESE HELP AN OPERATOR CONCEPTUALLY REMEMBER THESE  
02:58:30 14 KINDS OF COMMANDS.

02:58:32 15 SO THE HIGHLIGHTING ON THE PREVIOUS SCREEN OF RED AND  
02:58:35 16 GREEN, SHOW THE "SHOW HIERARCHY", AND ALSO THE "IP HIERARCHY."  
02:58:41 17 SO NOW IF WE ORGANIZE IT INTO THIS KIND OF TREE STRUCTURE,  
02:58:48 18 "SHOW" AND "IP" ARE THE ROOTS OF TWO TREES, THEN THEY BRANCH  
02:58:51 19 INTO THE DIFFERENT POSSIBILITIES FOR THE SUBSEQUENT WORDS.

02:58:54 20 SO FOR A COMMAND LIKE "SHOW IP ACCESS LISTS," YOU CAN SEE  
02:58:58 21 IN THE LEFT THAT IT'S IN THE "SHOW HIERARCHY", THE SECOND LAYER  
02:59:02 22 IS "IP," THEN THE THIRD IS "ACCESS LIST."

02:59:06 23 Q. SO DO THE HIERARCHIES YOU JUST DESCRIBED PLAY INTO ROLE IN  
02:59:10 24 THE FORMATION OF THE AUTHORIZING OF THE COMMANDS THEMSELVES?

02:59:15 25 A. THEY DO. THEY DEMONSTRATE THE CREATIVITY THAT GOES INTO

02:59:20 1 DETERMINING THE WORD ORDER. THERE'S CREATIVITY IN HOW YOU  
02:59:24 2 ORGANIZE THE WORDS AND HOW IT FITS INTO HIERARCHIES AND WHICH  
02:59:30 3 HIERARCHY IS SELECTED. AND I WILL TALK A LITTLE BIT MORE ABOUT  
02:59:35 4 THAT.

02:59:35 5 Q. NOW I WANT TO MOVE ON TO THE NEXT ELEMENT YOU LISTED WHICH  
02:59:39 6 IS THE OUTPUTS.

02:59:40 7 CAN YOU EXPLAIN TO US WHAT THE OUTPUTS ARE IN THIS CASE?

02:59:43 8 A. SURE. THE OUTPUT HERE IS I THINK ALSO PRETTY  
02:59:46 9 STRAIGHTFORWARD. WHEN YOU TYPE A COMMAND AT THE COMMAND LINE  
02:59:52 10 INTERFACE, IT'S SENT TO THE SWITCH OR ROUTER AND THEN A  
02:59:56 11 RESPONSE COMES BACK.

02:59:58 12 WHAT THE ANIMATION IS SHOWING. AND IN THIS CASE THE  
03:00:01 13 COMMAND THAT'S TYPED IS SHOW SPANNING-TREE. AND THE RESULTS  
03:00:05 14 THAT COME BACK, THEY ARE A LITTLE BIT HARD TO SEE, BUT EVEN IF  
03:00:08 15 YOU COULD SEE THEM IN GREAT DETAIL, I'M NOT SURE YOU WOULD MAKE  
03:00:12 16 A WHOLE LOT OF SENSE OF IT, BUT IT'S IN A FORMAT THAT'S  
03:00:16 17 STRUCTURED SO THAT A PERSON CAN UNDERSTAND IT.

03:00:19 18 THERE'S CREATIVITY TO THE PROCESS AND WHAT INFORMATION IS  
03:00:23 19 DISPLAYED, WHERE ON THE SCREEN IT GOES, I MEAN, REALLY YOU CAN  
03:00:27 20 ORGANIZE THESE OUTPUTS HOWEVER YOU WANT.

03:00:29 21 Q. SO DO ALL COMMANDS HAVE OUTPUTS?

03:00:32 22 A. NO. THE COMMANDS THAT HAVE OUTPUTS ARE THE ONES WHERE  
03:00:40 23 THERE'S USUALLY A REQUEST TO DISPLAY INFORMATION.

03:00:43 24 Q. SO I WANT TO MOVE ON TO THE NEXT ELEMENT THAT YOU TALKED  
03:00:47 25 ABOUT WHICH IS -- WHICH ARE HELP DESCRIPTIONS.

03:00:50 1 CAN YOU EXPLAIN WHAT THE HELP DESCRIPTIONS ARE?

03:00:52 2 A. SURE.

03:00:53 3 HELP DESCRIPTIONS ARE AT THE COMMAND LINE BEING ABLE TO  
03:01:00 4 TYPE A COMMAND OR A PORTION OF A COMMAND FOLLOWED BY A QUESTION  
03:01:04 5 MARK AND THEN YOU CAN GET A STRING OF TEXT THAT MIGHT REMIND  
03:01:07 6 THE PERSON WHAT THEY NEED OR SOME ADDITIONAL INFORMATION.

03:01:12 7 CLEARLY, THERE ARE QUITE A FEW COMMANDS. IT'S COMPLEX  
03:01:18 8 PIECE OF HARDWARE THAT REQUIRES CONFIGURATION. SO SOMETIMES A  
03:01:22 9 LITTLE INFORMATION TO THE OPERATOR IS HELPFUL.

03:01:25 10 SO THERE'S AN EXAMPLE HERE, SNMP, SERVER, HOST VERSION,  
03:01:30 11 QUESTION MARK. AND IT PROVIDES THE RESPONSE, SNMP VERSION TO  
03:01:35 12 USE FOR NOTIFICATION MESSAGES.

03:01:39 13 Q. AND THEN I WANT TO MOVE FORWARD TO THE NEXT ONE WHICH IS  
03:01:42 14 THE MODES AND PROMPTS.

03:01:45 15 NOW CAN YOU JUST BRIEFLY EXPLAIN TO US THE ARRANGEMENT OF  
03:01:50 16 THE MODES AND PROMPTS THAT WE ARE TALKING ABOUT HERE IN THIS  
03:01:52 17 CASE?

03:01:52 18 A. SURE. THE DIFFERENT MODES, I THINK MR. LOUGHEED TESTIFIED  
03:01:57 19 AND DESCRIBED THIS ON THE FIRST DAY. BUT WITHIN A ROUTER,  
03:02:02 20 THERE IS THE ABILITY TO HAVE DIFFERENT MODES. YOU START OFF IN  
03:02:07 21 AN EXECUTION MODE WHERE THE PROTECTION IS FAIRLY MINIMAL.

03:02:12 22 AND SO THE KINDS OF THINGS THAT YOU CAN DO ARE CHANGE  
03:02:16 23 TERMINAL SETTINGS, PERFORM BASIC TESTING AND DISPLAYING  
03:02:20 24 INFORMATION.

03:02:21 25 THERE'S A FURTHER KIND OF PRIVILEGED MODE, KIND OF AN

03:02:25 1 ADDITIONAL LEVEL OF SECURITY, THAT'S CALLED PRIVILEGED EXEC.  
03:02:28 2 AND THAT'S WHERE YOU'RE ABLE TO DO MORE OF THE CONFIGURATION OF  
03:02:32 3 THE DEVICE.

03:02:34 4 THERE'S TWO DIFFERENT MODES, AND THE WAY THAT THESE MODES  
03:02:38 5 ARE ORGANIZED IS YOU START OFF AT USER, YOU CAN THEN GO INTO  
03:02:43 6 THE PRIVILEGED MODE AND THEN THE NEXT STEP IS GLOBAL  
03:02:46 7 CONFIGURATION, WHERE YOU CAN CHANGE THINGS ABOUT THE WAY THE  
03:02:48 8 ENTIRE DEVICE WORKS.

03:02:52 9 OR THEN THERE'S A FOURTH MODE INSIDE OF THAT CALLED THE  
03:02:55 10 INTERFACE CONFIGURATION MODE, AND THAT'S WHERE YOU CAN  
03:02:57 11 CONFIGURE THINGS FOR A PARTICULAR INTERFACE.

03:03:01 12 AT SOME POINT WE WILL HAVE THE DEMONSTRATIVES OF THE CISCO  
03:03:04 13 AND ARISTA SWITCHES AND ROUTERS AND EACH OF THE PLACES YOU CAN  
03:03:08 14 PLUG IN A CABLE THAT'S CALLED AN INTERFACE. AND THE REASON FOR  
03:03:11 15 THAT IS YOU CAN CONFIGURE INTERFACES ON A ROUTER OR SWITCH TO  
03:03:16 16 DO THINGS DIFFERENTLY THAN OTHER INTERFACES.

03:03:19 17 AND IT GIVES YOU SOME NICE FLEXIBILITY IN HOW THE ROUTER  
03:03:23 18 AND SWITCH WORKS.

03:03:24 19 SO THERE'S REALLY THOSE FOUR MODES AND THEN ASSOCIATED  
03:03:28 20 WITH EACH ONE IS A CORRESPONDING PROMPT. AND THE PROMPT  
03:03:31 21 PROVIDING AN INDICATION TO THE USER AS TO WHAT MODE THEY'RE IN  
03:03:34 22 SO THEY HAVE AN UNDERSTANDING OF WHAT THEIR CAPABILITIES ARE IN  
03:03:38 23 THAT MODE.

03:03:41 24 Q. AND THEN FINALLY THE LAST THING YOU MENTIONED WERE THE  
03:03:45 25 USER MANUALS.

03:03:46 1 CAN YOU EXPLAIN TO US WHAT THOSE ARE BRIEFLY?

03:03:48 2 A. SURE.

03:03:49 3 THE USER MANUALS ARE USER MANUALS. THEY'RE THE MULTI PAGE  
03:03:53 4 DOCUMENTS THAT PROVIDE DESCRIPTIONS OF THE COMMANDS, THEY MIGHT  
03:03:58 5 PROVIDE EXAMPLES OF HOW TO DO THE CONFIGURATION. I THINK  
03:04:03 6 BEHIND THE SERIES OF ARISTA MANUALS THAT CAN BE VERY LONG  
03:04:07 7 BECAUSE THERE'S A FAIR NUMBER OF COMMANDS THAT HAVE TO BE  
03:04:09 8 DESCRIBED, KIND OF A REFERENCE MANUAL FOR SOMEBODY WHO IS --  
03:04:15 9 WHO NEEDS ADDITIONAL INFORMATION TO TRY AND LOOK THINGS UP.

03:04:18 10 Q. NOW, IN TERMS OF YOUR ORIGINALITY AND CREATIVITY ANALYSIS,  
03:04:25 11 CAN YOU JUST EXPLAIN TO US GENERALLY SPEAKING WHAT YOU DID?

03:04:29 12 A. SURE.

03:04:33 13 THIS METHODOLOGY SLIDE LOOKS SIMILAR TO THE ONE AT THE  
03:04:36 14 BEGINNING WHERE I TALKED ABOUT THE TYPES OF DOCUMENTS I  
03:04:38 15 CONSIDERED OVERALL.

03:04:39 16 BUT IN THINKING ABOUT THE SPECIFIC QUESTION AS TO  
03:04:42 17 ORIGINALITY, I FOCUSED ON THE MATERIALS THAT I LISTED HERE,  
03:04:45 18 RIGHT, THE DOCUMENTS AND E-MAILS PRODUCED BY CISCO AND ARISTA,  
03:04:48 19 THE TESTIMONY OF CISCO AND CISCO ENGINEERS, THE TESTIMONY OF  
03:04:52 20 OTHER ENGINEERS, AND THE CONVERSATIONS WITH CISCO AS WELL.

03:04:57 21 AND REALLY WHAT I'M TRYING TO UNDERSTAND IS WHETHER THE  
03:05:04 22 PROCESS OF CREATIVE, WHETHER THERE WAS A PROCESS IN PLACE,  
03:05:07 23 WHETHER THE ENGINEERS HAD THE FLEXIBILITY AND THE CHOICE OVER  
03:05:10 24 WHAT WORDS TO USE, WHETHER THERE WAS DESIGN CRITERIA THAT THEY  
03:05:14 25 CONSIDERED, WHETHER ONE ENGINEER USED ONE SET OF DESIGN

03:05:18 1 CRITERIA AND ANOTHER ONE USED SOMETHING ELSE.

03:05:21 2 AND ALL OF THIS INFORMATION GOES TO HELPING ME FORM AN

03:05:26 3 OPINION WHETHER IT'S PART OF THE PROCESS OF CISCO COMING UP

03:05:30 4 WITH THESE COMMANDS, WHETHER THERE WAS CREATIVITY IN WHAT THOSE

03:05:34 5 COMMANDS IT WERE THAT WERE ULTIMATELY SELECTED.

03:05:38 6 Q. AND THE ANALYSIS THAT YOU JUST DESCRIBED OF THE PROCESS,

03:05:42 7 WHAT CONCLUSION DID THAT LEAD YOU TO?

03:05:45 8 A. ULTIMATELY, I REACHED THE CONCLUSION THAT FOR THE

03:05:50 9 MULTIWORD COMMANDS, THE HELP DESCRIPTIONS, THE COMMAND PROMPTS,

03:05:55 10 THE OUTPUTS, THE MANUALS, IT WAS ALL A CREATIVE PROCESS AND THE

03:06:01 11 RESULT OF THAT WAS A CREATIVE OUTPUT.

03:06:04 12 Q. NOW, I WANT TO TALK ABOUT SOME OF THE THINGS THAT YOU

03:06:11 13 RELIED ON TO FORM LATE THAT OPINION.

03:06:13 14 AND IF WE CAN PULL UP EXHIBIT 851 WHICH IS IN EVIDENCE,

03:06:23 15 MR. FISHER. AND YOU SHOULD HAVE THAT, DR. ALMEROOTH, IN YOUR

03:06:26 16 BINDER.

03:06:27 17 A. YES, SIR.

03:06:28 18 Q. AND CAN YOU REMIND US WHAT EXHIBIT 851 IS, PLEASE?

03:06:33 19 A. 851 IS THE PARSER-POLICE DOCUMENT. I BELIEVE THAT

03:06:37 20 MR. REMAKER TESTIFIED ABOUT IT, BUT IT'S ONE OF THE DOCUMENTS

03:06:40 21 THAT I RELIED ON IN REACHING MY CONCLUSIONS.

03:06:44 22 Q. AND HOW DID THIS DOCUMENT FORM YOUR OPINIONS OR INFORM

03:06:49 23 YOUR OPINIONS?

03:06:50 24 A. IT HELPED ME UNDERSTAND WHAT THE PROCESS WAS AND SOME OF

03:06:57 25 WHAT WAS HAPPENING AS PART OF THE PROCESS.

03:07:00 1 FOR EXAMPLE, IF YOU LOOK UNDER THE PURPOSE, AND I WILL  
03:07:06 2 START READING IN THE MIDDLE, IT ALLOWS CISCO TO PROPOSE COMMAND  
03:07:11 3 LINE ADDITIONS AND GET FEEDBACK FROM FELLOW ENGINEERS WITH  
03:07:16 4 EXPERIENCE TO INSURE CONSISTENCY, USABILITY AND FRIENDLINESS OF  
03:07:25 5 THE CONFIGURATION INTERFACE TO CISCO IOS.

03:07:28 6 AND THERE'S OTHER PARTS I CAN TALK ABOUT IN THIS DOCUMENT,  
03:07:31 7 BUT REALLY IT PROVIDES A WAY FOR ENGINEERS WHO ARE BUILDING  
03:07:35 8 FUNCTIONALITY AND THEN HAVE TO COME UP WITH COMMANDS, TO  
03:07:38 9 CONSULT OTHER ENGINEERS TO GET FEEDBACK ON WHETHER THEIR  
03:07:42 10 DETERMINATIONS ON WHAT THE COMMANDS SHOULD BE, WAS GOOD ENOUGH.

03:07:47 11 Q. NOW, YOU HAD MENTIONED THAT IT'S -- THE PARSER-POLICE  
03:07:54 12 PROVIDES SOME ABILITY FOR ENGINEERS TO PROPOSE COMMAND LINE  
03:07:58 13 ADDITIONS AND GET FEEDBACK; IS THAT RIGHT?

03:08:01 14 A. YES.

03:08:01 15 Q. IN CONNECTION WITH THE MATERIALS YOU REVIEWED, DID YOU SEE  
03:08:03 16 ANY EVIDENCE THAT THAT ACTUALLY HAPPENED?

03:08:06 17 A. I DID. THERE WERE A NUMBER OF E-MAILS. I THINK SOME OF  
03:08:09 18 WHICH HAVE BEEN DISCUSSED IN THE TESTIMONY THIS WEEK, WHERE  
03:08:14 19 THEY TALK ABOUT DIFFERENT OPTIONS FOR WHAT THE COMMAND COULD  
03:08:18 20 BE.

03:08:18 21 IN SOME CASES THERE ARE REFERENCES IN THE E-MAILS TO WHERE  
03:08:22 22 THE DISCUSSIONS GOT FAIRLY HEATED. YOU COULD TELL THAT PEOPLE  
03:08:28 23 HAD A VESTED INTEREST IN THE PROCESS AND UNDERSTANDING WHAT THE  
03:08:34 24 ALTERNATIVES WERE, AND ULTIMATELY TRYING TO REACH A DECISION  
03:08:39 25 ABOUT WHAT THE RIGHT COMMAND SHOULD BE, OR AT LEAST WHAT THE



03:08:43 1 BEST ALTERNATIVE WOULD BE FROM SOMEONE'S PERSPECTIVE.

03:08:45 2 Q. NOW, ARE YOU FAMILIAR WITH A PARSER-POLICE E-MAIL ALIAS AT  
03:08:52 3 CISCO?

03:08:52 4 A. YES, I AM.

03:08:53 5 Q. AND DID YOU -- ACTUALLY, WHAT I SHOULD ASK YOU IS DO YOU  
03:09:00 6 UNDERSTAND GENERALLY WHAT KIND OF PEOPLE WERE ON THAT E-MAIL  
03:09:03 7 ALIAS?

03:09:04 8 A. I DO. AND THAT'S DESCRIBED HERE IN TERMS OF, THAT YOU CAN  
03:09:10 9 GET THE FELLOW SOFTWARE PROFESSIONALS AND CISCO, OTHER PEOPLE  
03:09:15 10 WHO HAD DEVELOPED COMMANDS HAD EXPERTISE IN HOW CISCO WAS  
03:09:22 11 DEVELOPING ITS USER INTERFACE.

03:09:25 12 I THINK THAT MR. LOUGHEED TESTIFIED THAT HE WAS ON THAT  
03:09:27 13 LIST. SO, YES.

03:09:30 14 Q. NOW GOING BACK TO EXHIBIT 851 WHICH IS THE PARSER-POLICE  
03:09:35 15 MANIFESTO DOCUMENT?

03:09:36 16 A. YES.

03:09:37 17 Q. DOES THIS DOCUMENT PROVIDE ANY GUIDELINES FOR COMMAND  
03:09:42 18 STRUCTURES OR AUTHORIZING?

03:09:44 19 A. IT DOES. IT BOTH PROVIDES GUIDELINES AS TO WHAT A PERSON  
03:09:49 20 SHOULD DO ABOUT SUBMITTING COMMANDS.

03:09:51 21 SO JUST AT THE BOTTOM THAT YOU SEE HERE ON THE FIRST PAGE,  
03:09:57 22 IS SUBMISSION INSTRUCTIONS AND WHAT A PERSON SHOULD DO TO  
03:10:00 23 SUBMIT SUGGESTIONS AND HOW TO HANDLE FEEDBACK.

03:10:04 24 IF YOU CONTINUE ON TO THE NEXT PAGE, THERE'S SOMETHING  
03:10:08 25 CALLED SYNTAX DESIGN GUIDELINES, ON PAGE 2.

03:10:15 1 AND SO THERE'S A SERIES OF NUMBERED ITEMS, STARTING UNDER  
03:10:19 2 SYNTAX DESIGN GUIDELINES. AND ULTIMATELY, I THINK THERE ARE  
03:10:23 3 ABOUT TEN IN THE LIST. AND THEY TALK ABOUT ASPECTS OF WHAT'S  
03:10:28 4 GOOD VERSUS WHAT'S BAD, OFFERS RECOMMENDATIONS FOR HOW TO  
03:10:32 5 DESIGN THE COMMAND-LINE INTERFACE.

03:10:37 6 JUST AS A QUICK EXAMPLE THIS FIRST ONE UNDER THINK  
03:10:41 7 EXTENSIBLE, AND REALLY IT'S A CONSIDERATION AS TO WHETHER TO  
03:10:43 8 USE A HYPHEN, AND THE IDEA IS TRYING TO AVOID USING HYPHENS  
03:10:48 9 BECAUSE IT INTERFERES WITH THE HIERARCHY IF YOU WANT TO EXTEND  
03:10:51 10 IT, AND THAT'S WHY IT'S CALLED THINK EXTENSIBLE.

03:10:56 11 THERE'S KIND OF A SET OF GUIDELINES OR ORIGINATIONS AS  
03:10:59 12 PART OF THIS MANIFESTO AND ENGINEERS COULD LOOK AT AND USE TO  
03:11:04 13 GUIDE THEM. BUT I THINK ALSO THIS DOCUMENT ULTIMATELY SAYS  
03:11:07 14 THAT IT'S UP TO THE PERSON WHO IS CREATING THE DEMAND TO MAKE  
03:11:11 15 THE DECISION ON WHAT TO DO.

03:11:13 16 I THINK IT EVEN SAYS THAT SOMETIMES THE DECISIONS ARE BAD  
03:11:16 17 AND SOMETIMES YOU HAVE TO LIVE WITH THOSE DECISIONS, BECAUSE  
03:11:20 18 YOU DON'T WANT TO GO BACK AND CHANGE THE COMMANDS LATER.

03:11:23 19 Q. SO IF WE GO A LITTLE BIT -- SCROLL DOWN, MR. FISHER AND  
03:11:27 20 TALK ABOUT SOME MORE OF THESE GUIDELINES. ACTUALLY, WE HAVE TO  
03:11:33 21 GO TO A NEW PAGE, SORRY.

03:11:35 22 YEAH, SO, I WOULD LIKE TO TALK ABOUT NUMBER SIX THERE, DO  
03:11:40 23 YOU SEE THAT ONE? IF WE CAN BLOW IT UP.

03:11:43 24 A. YES.

03:11:44 25 Q. AND IT SAYS, WHEN NAMING A COMMAND, TRY TO PICK NAMES THAT

03:11:48 1 WOULD BE FAMILIAR TO THE PEOPLE IN THE INDUSTRY; DO YOU SEE  
03:11:51 2 THAT?

03:11:51 3 A. I DO.

03:11:52 4 Q. NOW DID YOU CONSIDER THAT GUIDELINE AS YOU WERE GOING  
03:11:55 5 THROUGH AND DETERMINING WHETHER THERE WAS CREATIVITY IN THE  
03:11:58 6 COMMAND EXPRESSIONS?

03:11:59 7 A. I DID. AND EVEN THERE ARE STANDARDS FOR PROTOCOLS THAT  
03:12:04 8 ARE IN USE, FOR EXAMPLE IP AS A STANDARD, THERE'S STILL SOME  
03:12:10 9 FLEXIBILITY AND CREATIVITY IN HOW YOU CAN REFERENCE THAT  
03:12:13 10 PROTOCOL.

03:12:15 11 WHAT NUMBER SIX IS SAYING IS AS A GENERAL CONVENTION, IT'S  
03:12:19 12 USUALLY BETTER TO REFERENCE THE PROTOCOL, THOUGH THERE ARE  
03:12:24 13 INSTANCES WHERE THAT'S NOT NECESSARILY THE CASE BECAUSE OF  
03:12:28 14 AMBIGUITY OR CONFUSION THAT TAKES PLACE.

03:12:33 15 SO WHILE IT DOES SAY, FOR EXAMPLE, IP IN THE CASE OF MTU,  
03:12:41 16 BECAUSE IT'S AN ABBREVIATION FOR MAXIMUM TRANSITION UNIT, IN  
03:12:44 17 OTHER INSTANCES YOU HAVE TO MAKE DIFFERENT DECISIONS BECAUSE IT  
03:12:47 18 MIGHT COMPETE WITH A DIFFERENT COMMAND.

03:12:49 19 SO THERE'S A LOT OF FACTORS THAT GO INTO A PERSON  
03:12:52 20 CONSIDERING ULTIMATELY WHAT THE BEST CHOICE OR WHAT TWO GOOD  
03:12:56 21 CHOICES MIGHT BE.

03:12:57 22 Q. AND IN THAT ANSWER YOU TALKED ABOUT COMPETE WITH A  
03:13:02 23 DIFFERENT COMMAND, COULD YOU EXPLAIN WHAT YOU MEAN THERE?

03:13:05 24 A. SURE.

03:13:06 25 THERE ARE CERTAIN WORDS THAT HAVE DIFFERENT MEANINGS, THE

03:13:10 1 SAME WORD HAS A DIFFERENT MEANING AND DIFFERENT CONTEXT. AND  
03:13:13 2 WHILE YOU MIGHT BE ABLE TO INTUIT THE MEANING BASED ON WHICH  
03:13:20 3 HIERARCHY YOU'RE IN, THE BETTER THAT YOU CAN AVOID AMBIGUITY IN  
03:13:25 4 THE COMMAND, THE LESS PRONE YOU WILL BE TO ERRORS.

03:13:31 5 SO IN HAD SOME INSTANCES ONE ENGINEER MIGHT THINK THAT IP  
03:13:36 6 MTU 576 IS A GOOD COMMAND. IN ANOTHER INSTANCE, ANOTHER  
03:13:40 7 ENGINEER MIGHT NOT LIKE MTU BECAUSE IT'S ALSO USED FOR ANOTHER  
03:13:44 8 PROTOCOL.

03:13:45 9 AND SO THEY WANT TO DO SOMETHING THAT'S SPECIFIC TO IP IN  
03:13:49 10 THIS INSTANCE.

03:13:50 11 SO THERE'S A LOT OF CONSIDERATIONS, A LOT OF DECISIONS, A  
03:13:53 12 LOT OF CREATIVITY THAT GOES INTO SOMETHING, INTO DESIGNING ONE  
03:14:00 13 OF THESE COMMANDS.

03:14:06 14 Q. NOW MR. FISHER, IF WE COULD GO TO SLIDE 22.

03:14:09 15 SO CAN YOU SHOW US WHAT YOU ARE -- EXPLAIN TO US WHAT YOU  
03:14:13 16 ARE ILLUSTRATING HERE, DR. ALMEROTH?

03:14:15 17 A. SURE.

03:14:16 18 IF WE THINK ABOUT ONE PLACE WHERE CREATIVITY CAN EXIST,  
03:14:19 19 AND THAT'S IN THE WORD CHOICE, YOU CAN LOOK AT A COMMAND THAT  
03:14:23 20 EXISTS NOW, SHOW IP ACCESS LIST, AND REALLY YOU COULD CONSIDER  
03:14:28 21 A BUN CH OF DIFFERENT OPTIONS FOR ANY ONE OF THOSE WORDS.

03:14:33 22 FOR EXAMPLE, FOR SHOW, YOU CAN USE DISPLAY OR PRINT OR  
03:14:38 23 WATCH OR ANY OF THE OTHER COMMANDS THAT ARE -- ANY OF THE OTHER  
03:14:43 24 WORDS THAT ARE ON THE LIST.

03:14:45 25 THE FACT THAT WE HAVE A NUMBER OF SHOW COMMANDS TODAY AND

03:14:48 1 WE THINK ABOUT SHOW TODAY, AND IF YOU ARE A NETWORK ENGINEER,  
03:14:52 2 YOU UNDERSTAND SHOW VERY WELL AND WHAT THE HIERARCHY IS  
03:14:55 3 SUPPOSED TO MEAN. WE STILL HAVE TO GO BACK TO THE POINT IN  
03:14:59 4 TIME WHEN SHOW IS BEING CONTEMPLATED, AND THINK ABOUT THE  
03:15:03 5 CREATIVITY AND THE CHOICES THAT WERE MADE AT THAT TIME.

03:15:06 6 AND AT THE TIME, SOMETHING LIKE "DISPLAY" OR EVEN "DISP"  
03:15:12 7 WOULD BE AN EQUAL NUMBER OF CHARACTERS, OR "VIEW" MIGHT HAVE  
03:15:16 8 BEEN A COMPLETELY REASONABLE ALTERNATIVE.

03:15:18 9 THE SAME THING FOR IP, THE ONE I THINK IS REASONABLE ON  
03:15:23 10 THAT LIST THAT APPEALS TO ME IN PARTICULAR, IS L3. IP IS A  
03:15:29 11 LAYER THREE PROTOCOL, IT'S EASY TO TYPE L3, PEOPLE IN THE  
03:15:34 12 INDUSTRY KNOW WHAT IT IS, I THINK SHOW L3 ACCESS LISTS,  
03:15:39 13 ESPECIALLY GIVEN THAT THERE'S L2 ACCESS LISTS, WOULD MAKE A LOT  
03:15:44 14 OF SENSE TO ME.

03:15:45 15 AND SO IN OTHER WORDS, THERE'S DIFFERENT OPTIONS FOR ANY  
03:15:48 16 OF THESE DIFFERENT WORDS THAT COULD BE SUBSTITUTED BY THE  
03:15:51 17 PERSON WHO IS WRITING THE COMMAND AT THAT TIME.

03:15:54 18 Q. SO THEN "ACCESS-LIST;" DO YOU SEE THAT?

03:15:59 19 A. I DO.

03:16:00 20 Q. NOW DOWN, YOU HAVE "ACL," AS ONE OF THE ABBREVIATIONS?

03:16:07 21 A. YES.

03:16:07 22 Q. IS THAT A MORE COMMON WAY TO REFER TO ACCESS LIST?

03:16:11 23 A. IT IS. AND IN FACT, IT'S COMMON ENOUGH THAT IT HAS ITS  
03:16:15 24 OWN PRONUNCIATION. I HEARD IT EARLIER THIS WEEK AND I'M NOT  
03:16:18 25 SURE THEY EXPLAINED IT, BUT THE WORD IS ACL, YOU CAN JUST

PRONOUNCE THE LETTERS, IT'S NOT A REAL WORD.

BUT IT'S VERY COMMON FOR ENGINEERS TO TALK ABOUT ACL'S.

AFTER A WHILE, THEY USE ENOUGH OF THESE, IT STARTS TO SOUND

LIKE A FOREIGN LANGUAGE, BUT IT DOES MAKE SENSE TO THE

ENGINEERS WHO SEE THESE COMMANDS.

Q. AND ACL, WHAT DOES THAT STAND FOR?

A. ACCESS CONTROL LISTS, ACL.

Q. NOW IF WE MOVE FORWARD, IN TERMS OF YOUR ANALYSIS, DID YOU  
DECIDE WHETHER THE ARRANGEMENT PLAYS INTO THE CREATIVITY PART?

A. I DO. OR I DID. AND IT DOES PLAY A ROLE.

IN FACT, IF YOU REMEMBER TO JUST TWO MINUTES AGO WHERE I  
TALKED ABOUT THE PARSER-POLICE MANIFESTO THAT BOX NUMBER ONE  
WAS ABOUT EXTENSIBLE. AND PART OF THAT HAS TO DO WITH THE WORD  
ORDER THAT YOU CAN USE.

AND SO YOU CAN USE SOMETHING LIKE SHOW IP ACCESS LISTS,  
AGAIN IS OUR EXAMPLE. AND REALLY YOU CAN ORGANIZE THOSE IN ANY  
WAY.

AND ONE ENGINEER MIGHT SAY THE EMPHASIS HERE IS ON  
DISPLAYING INFORMATION. ANOTHER ONE MIGHT SAY, WELL THE  
EMPHASIS REALLY IS ON ACCESS LISTS, SOY I COULD CREATE A  
HIERARCHY CALLED ACCESS LISTS, I COULD IDENTIFY WHAT THE  
PROTOCOL IS NEXT, IP OR OTHER KINDS OF ACCESS LISTS, AND THEN A  
VERB TO SHOW WHAT THE CONFIGURATION IS, CONFIG TO CONFIGURE  
THEM.

SO THE WORD CHOICE AND THE ORDERING HERE IS SOMETHING

03:17:56 1 THAT'S A -- I'M SORRY, THE WORD ORDER IS A CREATIVE ENDEAVOR.

03:18:00 2 Q. SO THEN IN TERMS OF THE ARRANGEMENT OF THE WORDS, HOW DOES  
03:18:05 3 THAT PLAY INTO THE ORGANIZATION OF THESE MULTIWORD COMMANDS?

03:18:09 4 A. SURE. ON THIS DEMONSTRATIVE, IT'S BACK TO THE  
03:18:12 5 REPRESENTATION OF SHOW IP ACCESS LISTS BECAUSE "SHOW" IS FIRST,  
03:18:20 6 IT GOES INTO THE "SHOW HIERARCHY."

03:18:24 7 THE NEXT DEMONSTRATIVE SHOWS YOU COULD HAVE ACTUALLY PUT  
03:18:26 8 IT INTO A DIFFERENT HIERARCHY. YOU COULD HAVE PUT IT INTO THE  
03:18:30 9 IP HIERARCHY SO THEN THE COMMAND WOULD BE IP SHOW ACCESS LIST.

03:18:34 10 EITHER WOULD BE POSSIBLE. EITHER WOULD BE AN OPTION.  
03:18:37 11 THERE'S NO CONSTRAINT OR LIMITATION THAT IT'S ONE VERSUS THE  
03:18:40 12 OTHER.

03:18:41 13 AND SO THE FACT THAT WE HAVE IT NOW, WAS BASED ON A  
03:18:47 14 CREATIVE CHOICE BY THE ENGINEER WHO DEVELOPED IT AT THAT TIME.

03:18:52 15 Q. NOW BASED UPON YOUR REVIEW IN THIS CASE, DID YOU BECOME  
03:18:55 16 FAMILIAR WITH SOME OF THE CONSIDERATIONS FOR DECIDING TO  
03:18:59 17 STRUCTURE A COMMAND ONE WAY VERSUS ANOTHER WAY?

03:19:02 18 A. YES.

03:19:02 19 Q. AND CAN YOU EXPLAIN TO US WHAT THAT IS?

03:19:05 20 A. SURE.

03:19:06 21 SO FIRST OF ALL, THERE ARE LOTS OF DIFFERENT  
03:19:08 22 CONSIDERATIONS AND SOME PEOPLE WILL CONSIDER DIFFERENT  
03:19:12 23 CONSIDERATIONS DIFFERENTLY.

03:19:14 24 I THINK THE ONE THAT I'VE HIGHLIGHTED SO FAR IS THE USE OF  
03:19:18 25 THE HYPHEN, SOME PEOPLE SAY IT'S GOOD, SOME PEOPLE SAY IT'S

03:19:21 1 BAD. THE MANIFESTO SAID NOT TO USE HYPHENS.

03:19:29 2 BUT IF YOU GO BACK TO SLIDE 11, FOR EXAMPLE, THE FIGURE  
03:19:35 3 THAT DISPLAYED ALL THE COMMANDS, THE 506 AT ISSUE, THERE'S LOTS  
03:19:40 4 OF COMMANDS THAT HAVE HYPHENS.

03:19:42 5 SO IN SOME INSTANCES IT'S A DESIGN CONSIDERATION WHETHER  
03:19:45 6 TOO USE A HYPHEN OR NOT. IT'S A CONSIDERATION WHETHER TO USE  
03:19:50 7 ONE WORD VERSUS ANOTHER OR NOT.

03:19:52 8 IN SOME CASES THE RECOMMENDATIONS AS DESCRIBED IN THE  
03:19:57 9 MANIFESTO ARE ADHERED TO, SOMETIMES THERE'S EXCEPTIONS, BUT  
03:20:03 10 ULTIMATELY WHAT YOU HOPE TO HAVE IS A CONSISTENT MEMORABLE  
03:20:07 11 COMMAND-LINE INTERFACE INSTEAD OF MULTIWORD COMMANDS.

03:20:11 12 Q. IF WE COULD GO TO SLIDE 26, MR. FISHER.

03:20:15 13 SO NOW I WANT TO TALK ABOUT THE COMMAND OUTPUTS THAT YOU  
03:20:19 14 DESCRIBED A BIT AGO AND TALK ABOUT YOUR ANALYSIS OF THE CREDIT  
03:20:24 15 ACTIVITY THERE, OKAY.

03:20:25 16 A. CERTAINLY.

03:20:27 17 Q. SO WHAT DID YOU DO TO DO THAT ANALYSIS?

03:20:31 18 A. SO FOR THE SCREEN OUTPUTS, WHAT I WAS ABLE TO DO WAS ALSO  
03:20:35 19 LOOK AT THE USER MANUALS, LOOK AT THE SAME KINDS OF E-MAIL  
03:20:38 20 EXCHANGES WHERE THERE WERE DISCUSSIONS ABOUT WHAT SOME OF THE  
03:20:43 21 OUTPUTS SHOULD BE, THE SAME KINDS OF MATERIALS THAT I HAD  
03:20:48 22 DISCUSSED PREVIOUSLY THAT I HAD CONSIDERED AS PART OF THIS  
03:20:50 23 QUESTION.

03:20:51 24 Q. AND SO YOU TALKED ABOUT THIS EXAMPLE BEFORE WHERE YOU TYPE  
03:20:57 25 IN A COMMAND AND THEN YOU GET AN OUTPUT BACK.



03:21:00 1 CAN YOU EXPLAIN TO US WHAT YOU BELIEVE TO BE THE  
03:21:06 2 CREATIVITY IN THE OUTPUT?

03:21:08 3 A. SURE. THE CREATIVITY HERE, IF YOU CAN SEE THE WORDS ON  
03:21:13 4 THE SCREEN HERE, THERE REALLY IS A LOT OF VARIABILITY IN HOW  
03:21:19 5 YOU CAN ORGANIZE THIS INFORMATION. THIS IS FOR THE COMMAND  
03:21:23 6 "SHOW SPANNING-TREE," AND IT PROVIDES SOME INFORMATION ABOUT  
03:21:28 7 WHAT PROTOCOL IS ENABLED.

03:21:31 8 AND THEN THERE ARE DIFFERENT FIELDS, AND THEN AFTER THE  
03:21:33 9 FIELDS ARE INFORMATION ABOUT THE STATUS OF THE ROUTER.

03:21:37 10 NOW THE FIELDS THEMSELVES AND THE NAMES OF THE FIELDS  
03:21:41 11 DON'T CHANGE FROM ONE INSTANCE TO THE NEXT IF YOU WERE  
03:21:51 12 EXECUTING THESE COMMANDS ON AN OPERATING ROUTER, BUT THE VALUES  
03:21:54 13 THAT GO INTO THOSE FIELDS.

03:21:56 14 NOW IN AND INSTANCE THE VALUES HAVE THE SAME UNITS. IT  
03:22:00 15 MIGHT MEGABITS PER SECOND IN THE COUNTER OF PACKETS THAT WERE  
03:22:03 16 LOST.

03:22:03 17 SO ALL OF THE INFORMATION THAT'S DISPLAYED CAN BE REALLY  
03:22:06 18 ORGANIZED IN ANY FASHION. YOU COULD DO IT IN TABLES, YOU COULD  
03:22:09 19 DO IT IN LINES. THERE REALLY IS A LOT OF CREATIVITY INVOLVED  
03:22:13 20 IN DECIDING AND ORGANIZING THE INFORMATION HERE.

03:22:18 21 Q. NOW IN CONNECTION WITH YOUR ANALYSIS OF THE OUTPUTS, DID  
03:22:21 22 YOU DETERMINE WHETHER THERE WERE ANY SIGNIFICANT CONSTRAINTS ON  
03:22:25 23 HOW YOU COULD CONSTRUCT THESE OUTPUTS?

03:22:27 24 A. I DID. AND THERE REALLY AREN'T. YOU CAN INCLUDE ANY  
03:22:33 25 INFORMATION, YOU CAN ORGANIZE IT IN ANY WAY.

03:22:37 1           THERE MIGHT BE CONSTRAINTS LIKE YOU HAVE TO USE ENGLISH OR  
03:22:41 2           SOMETHING LIKE THAT, BUT THAT'S NOT REALLY A SIGNIFICANT  
03:22:44 3           CONSTRAINT THAT IMPINGES ON THE ABILITY OF THE PERSON DESIGNING  
03:22:49 4           THIS OUTPUT TO EXERCISE CREATIVITY IN WHAT THOSE CHOICES MIGHT  
03:22:57 5           BE.

03:22:57 6           Q.    NOW I WANT TO GO FORWARD TO THE HELP DESCRIPTIONS.  YOU  
03:23:00 7           DESCRIBED THOSE FOR US.

03:23:02 8           WHAT DID YOU DO IN CONNECTION WITH YOUR ANALYSIS OF THE  
03:23:07 9           HELP DESCRIPTIONS AND THE CREATIVITY THERE.

03:23:10 10          A.   THE ANALYSIS AGAIN, WAS VERY SIMILAR, I CAN LOOK AT THE  
03:23:14 11          USER MANUALS.

03:23:15 12           I CAN LOOK AT THE SWITCHES THEMSELVES IN SOME INSTANCES.  
03:23:21 13          AND I CAN LOOK AT THE HELP DESCRIPTIONS THAT ARE EXPECTED TO BE  
03:23:24 14          PRODUCED ON THE SWITCHES WHEN THEY'RE RUNNING THE OPERATING  
03:23:29 15          SYSTEM.

03:23:30 16           AND SO THERE'S AN ANIMATION HERE THAT SHOWS FOR THE  
03:23:33 17          COMMAND "SNMP-SERVER HOST VERSION?"  AND THEN IT RETURNS THE  
03:23:40 18          RESPONSE, "SNMP VERSION TO USE FOR NOTIFICATION MESSAGES."

03:23:46 19           AND MY UNDERSTANDING OF THE PROCESS BY WHICH THOSE ARE  
03:23:50 20          CREATED IS CREATIVE.  THERE AREN'T REALLY CONSTRAINTS ON WHAT  
03:23:56 21          THE USER OR THE PERSON DESIGNING THOSE COMMANDS IS ALLOWED TO  
03:24:00 22          INCLUDE IN TERMS OF THE HELP INFORMATION.

03:24:03 23          Q.   NOW I WANT TO MOVE FORWARD TO THE NEXT ELEMENT OF THE USER  
03:24:10 24          INTERFACE THAT YOU DESCRIBED WHICH IS THE MODES AND PROMPTS AND  
03:24:14 25          THE ARRANGEMENT OF THE MODES AND PROMPTS?

03:24:16 1 A. YES.

03:24:17 2 Q. WHAT DID YOU DO IN CONNECTION WITH YOUR ANALYSIS OF THE  
03:24:20 3 CREATIVITY THERE?

03:24:20 4 A. IT'S A SIMILAR KIND OF METHODOLOGY. I LOOKED AT WHAT THE  
03:24:25 5 DOCUMENTS WOULD SAY ABOUT MODES AND PROMPTS AND ALSO WHAT THE  
03:24:30 6 DOCUMENTS SAY ABOUT THE PROCESS BY WHICH THESE WERE DESIGNED.  
03:24:35 7 I REVIEWED DEPOSITION TESTIMONY. I BELIEVE MR. LOUGHEED  
03:24:38 8 TESTIFIED ABOUT THIS ON MONDAY.

03:24:43 9 AND SO THE IDEA THAT YOU HAVE THE EXECUTIVE, THE EXEC  
03:24:50 10 INTERFACE AND THEN THE PRIVILEGE AND THEN THE GLOBAL  
03:24:53 11 CONFIGURATION AND THEN THE INTERFACE CONFIGURATION MODES AND  
03:24:57 12 THEN THE CORRESPONDING PROMPTS, THERE'S OTHER WAYS THAT THAT  
03:25:01 13 COULD HAVE BEEN ORGANIZED, OTHER NAMES THAT COULD HAVE BEEN  
03:25:05 14 USED, AND SO IT'S CLEAR THAT THERE WAS A CREATIVE PROCESS IN  
03:25:12 15 THE MODES AND PROMPTS AS WELL.

03:25:13 16 Q. IN CONNECTION WITH YOUR ANALYSIS OF THE CASE, HAD YOU SEEN  
03:25:19 17 ANYTHING TO INDICATE THAT SOMEBODY ELSE BEFORE CISCO HAD THE  
03:25:21 18 ARRANGEMENT THAT YOU JUST DESCRIBED OF MODES AND PROMPTS?

03:25:25 19 A. NO, NOT THOSE FOUR MODES AND PROMPTS THAT ARE AT ISSUE  
03:25:28 20 HERE.

03:25:29 21 Q. NOW JUST SO I UNDERSTAND, SO IS IT POSSIBLE, CAN YOU JUST  
03:25:35 22 JUMP FROM THE TOP LEVEL MODE ALL THE WAY DOWN TO THE INTERFACE  
03:25:43 23 MODE?

03:25:43 24 A. NO AS PART OF THE STRUCTURE OF THE MODES AND PROMPTS, THEY  
03:25:45 25 ARE NESTED, MEANING YOU HAVE TO BE IN THE FIRST MODE, THE EXEC

03:25:52 1 MODE, AND FROM THERE YOU CAN ONLY GET TO THE PRIVILEGED MODE.

03:25:56 2 THEN ONCE YOU ARE IN THE PRIVILEGED MODE, YOU HAVE TO GO  
03:25:58 3 TO THE GLOBAL CONFIGURATION AND THEN TO THE INTERFACE  
03:26:01 4 CONFIGURATION MODE.

03:26:01 5 SO THEY ARE NESTED THAT WAY. AND THAT WAS A CREATIVE  
03:26:06 6 DECISION. THEY DIDN'T HAVE TO BE NESTED, YOU COULD GO TO ANY  
03:26:10 7 MODE AS AN ALTERNATIVE.

03:26:11 8 AND SO THAT WAS SOMETHING THAT WAS DESIGNED AND SPECIFIED  
03:26:15 9 THAT WAY ON PURPOSE.

03:26:17 10 Q. NOW, I WANT TO GO FORWARD TO SLIDE 29, PLEASE, AND TALK  
03:26:27 11 ABOUT THE USER MANUALS; DO YOU SEE THAT?

03:26:29 12 A. YES.

03:26:30 13 Q. NOW, IN YOUR -- WHAT DID YOU DO FOR YOUR ANALYSIS OF THE  
03:26:35 14 POTENTIAL CREATIVITY OF THE USER MANUALS?

03:26:36 15 A. HERE AGAIN, I RELIED ON SIMILAR KINDS OF INFORMATION.  
03:26:41 16 CLEARLY WHEN YOU HAVE A MULTI HUNDRED PAGE MANUAL THAT'S  
03:26:44 17 ESSENTIALLY LIKE A BOOK, THERE'S ALL SORTS OF WAYS IN WHICH THE  
03:26:48 18 INFORMATION CAN BE ORGANIZED WITHIN THAT MANUAL, WHAT THE  
03:26:53 19 INFORMATION SAYS EXACTLY, THE WORD CHOICES THAT ARE USED TO  
03:26:57 20 DESCRIBE ASPECTS OF THE SWITCH OR ROUTER.

03:27:01 21 IT REALLY IS ON PAR WITH A BOOK. AND YOUR ABILITY TO PUT  
03:27:08 22 INTO INFORMATION IN THAT MANUAL THAT YOU WANT.

03:27:10 23 Q. SO THEN IN TERMS OF THE FOUR ELEMENTS OF THE USER  
03:27:14 24 INTERFACE, LET'S TAKE THAT, THOSE FIRST. DID YOU REACH ANY  
03:27:18 25 CONCLUSION AS TO THE ORIGINALITY AND CREATIVITY OF THOSE

03:27:23 1 ELEMENTS?

03:27:23 2 A. YES. FOR THE USER INTERFACE, THAT INCLUDED THE FOUR  
03:27:27 3 COMPONENTS, THE MULTIWORD COMMANDS, THE OUTPUTS, THE HELP  
03:27:32 4 DESCRIPTIONS, THE MODES AND PROMPTS, AND THAT WAS THE USER  
03:27:36 5 INTERFACE FOR EACH OF IOS, IOS XR, IOS XE, AND NX-OS, I HAD  
03:27:43 6 FOUND THAT THERE WAS CREATIVITY IN THE WAY THAT ALL FOUR OF  
03:27:49 7 THOSE COMPONENTS WERE DETERMINED.

03:27:51 8 Q. AND DID YOU ANALYZE, IN TERMS OF WHAT WE JUST WALKED  
03:27:55 9 THROUGH IN DESCRIBING YOUR ANALYSIS, DID YOU DO THAT FOR EACH  
03:27:58 10 OF THE USER INTERFACES AT ISSUE IN THIS CASE?

03:28:00 11 A. YES, I DID.

03:28:02 12 Q. AND THEN WITH RESPECT TO THE USER DOCUMENTATION, THE  
03:28:07 13 MANUALS THAT ARE AT ISSUE THEMSELVES, DID YOU REACH A  
03:28:10 14 CONCLUSION ABOUT THE ORIGINALITY AND CREATIVITY THERE?

03:28:13 15 A. YES, I DID.

03:28:14 16 FOR THE USER MANUALS THAT HAVE BEEN IDENTIFIED, I ALSO  
03:28:18 17 DETERMINED THAT THEY WERE -- THE PROCESS BY WHICH THEY WERE  
03:28:25 18 DEVELOPED WAS A CREATIVE PROCESS AND THAT ULTIMATELY THE  
03:28:31 19 PRODUCTS THEMSELVES WERE CREATED.

03:28:33 20 Q. AND WAS THAT TRUE WITH RESPECT TO ALL THE MANUALS THAT YOU  
03:28:35 21 LOOKED AT?

03:28:36 22 A. YES, IT IS.

03:28:37 23 Q. NOW, I WANT TO GO FORWARD TO SLIDE 32, MR. FISHER. THANK  
03:28:45 24 YOU, SIR.

03:28:46 25 SO LET'S TALK ABOUT WHAT YOU DESCRIBED AS THE SECOND

03:38:51 1 SIMILARITY AND ACCESS?

03:38:52 2 A. WHAT IT'S DESCRIBING IS THAT THERE ARE REQUESTS THAT ARE  
03:38:55 3 THEN FOLLOWED UP ON BY ARISTA TO IMPLEMENT COMMANDS AND  
03:39:01 4 PROVIDING THE CORRESPONDING USER INTERFACE FOR THAT COMMAND,  
03:39:04 5 INCLUDING WHAT THE MULTIWORD COMMAND IS, WHAT THE OUTPUT OF THE  
03:39:08 6 COMMAND IS, THAT IS AN ATTEMPT TO MIMIC OR COPY CISCO.

03:39:13 7 Q. NOW I WOULD LIKE TO, I WOULD LIKE YOU TO TURN TO  
03:39:19 8 EXHIBIT 488 NOW, THIS ONE IS IN EVIDENCE, SO IF WE COULD PUT  
03:39:25 9 THAT UP ON THE SCREEN.

03:39:32 10 AND CAN YOU TELL US WHAT EXHIBIT 488 IS?

03:39:35 11 A. SURE. THAT'S AN ARISTA USABILITY COMPARISON STUDY. AND  
03:39:42 12 IF YOU LOOK AT WHAT THE PURPOSE AND OVERVIEW OF THE DOCUMENT  
03:39:49 13 IS --

03:39:49 14 Q. PAGE 7, I BELIEVE; IS THAT RIGHT?

03:39:51 15 A. YES, IT'S AFTER THE TABLE OF CONTENTS.

03:39:54 16 AND IT SAYS, THE PURPOSE OF THIS STUDY WAS TO GAUGE THE  
03:39:57 17 LEVEL OF ADJUSTMENT REQUIRED FOR A NETWORK ENGINEER TO  
03:39:59 18 TRANSITION FROM A FAMILIAR IOS PLATFORM, THAT'S CISCO, TO AN  
03:40:04 19 NX-OS PLATFORM, AND THAT'S ALSO CISCO, AND EOS PLATFORM, SO  
03:40:12 20 THAT'S ARISTA.

03:40:12 21 SO THE PURPOSE OF THIS STUDY IS TO COMPARE TWO CISCO USER  
03:40:18 22 INTERFACES WITH THE EOS USER INTERFACE.

03:40:20 23 Q. AND DO YOU KNOW WHAT THE CONCLUSION WAS OF THE STUDY?

03:40:24 24 A. THE CONCLUSION GENERALLY WAS THAT THEY WERE VERY SIMILAR  
03:40:28 25 IN THINGS LIKE THE COMMANDS, THE CONFIGURATIONS, THE HELP

03:40:37 1 OUTPUTS, AND THERE ARE DETAILED GRAPHICS IN THIS DOCUMENT THAT  
03:40:41 2 SHOW THAT.

03:40:41 3 Q. AND WHEN YOU SAY THE CONFIGURATIONS, WHAT DOCUMENT?

03:40:44 4 A. BY CONFIGURATIONS, I MEAN THE MULTIWORD COMMANDS THAT --  
03:40:49 5 THE WAY THIS STUDY WORKED WAS FOR THE TESTER TO TAKE THE SAME  
03:40:56 6 SETS OF COMMANDS AND TYPE THEM ON AN IOS, A DEVICE RUNNING IOS,  
03:41:04 7 A DEVICE RUNNING NX-OS, AND A DEVICE RUNNING EOS, AND TO LOOK  
03:41:09 8 AT WHETHER THE SYNTAX, THE FORMAT OF THE COMMAND WAS THE SAME  
03:41:13 9 ON ALL THREE, AND THEN WHETHER OR NOT THE OUTPUTS WERE THE  
03:41:17 10 SAME, AND THERE WAS ALSO A TESTING OF THE HELP DESCRIPTIONS AS  
03:41:20 11 WELL.

03:41:22 12 MR. VAN NEST: EXCUSE ME, YOUR HONOR. I DON'T HAVE  
03:41:24 13 AN OBJECTION TO THIS EXHIBIT, BUT IT'S NOT CURRENTLY IN  
03:41:26 14 EVIDENCE.

03:41:27 15 THE COURT: OH. THANK YOU FOR THAT.

03:41:28 16 MR. VAN NEST: I DON'T HAVE AN OBJECTION TO IT, SO IF  
03:41:30 17 YOU WANT TO MOVE IT, BUT IT HAS NOT BEEN ADMITTED, BASED ON OUR  
03:41:34 18 SHEET.

03:41:34 19 MR. NELSON: IT WAS ATTACHED TO THAT E-MAIL, AND I  
03:41:37 20 KNEW THEY HAD AN OBJECTION TO THE E-MAIL, BUT I WILL MOVE THIS  
03:41:40 21 VERSION IN. I APOLOGIZE.

03:41:41 22 MR. VAN NEST: NO OBJECTION, YOUR HONOR.

03:41:42 23 THE COURT: THANK YOU.

03:41:42 24 I APPRECIATE THAT, AND IT WILL BE SEPARATELY ADMITTED.  
03:41:46 25 (PLAINTIFF'S EXHIBIT 488, WAS ADMITTED INTO EVIDENCE.)

03:41:46 1 MR. NELSON: THANK YOU, YOUR HONOR.

03:41:47 2 Q. SO DR. ALMEROTH, STAYING ON THIS IDEA OF CONFIGURATION, I  
03:41:54 3 MEAN, ARE THERE CONFIGURATION FILES, IS THAT SOMETHING THAT YOU  
03:41:58 4 HEARD OF OR CONFIGURATION STRUCTURES FOR THESE SWITCHES?

03:42:04 5 A. YES. AND HERE'S WHERE THAT COMES INTO PLAY AND BECOMES  
03:42:08 6 RELEVANT.

03:42:08 7 AS I HOPE I HAVE CONVEYED THAT A SWITCH IS A VERY COMPLEX  
03:42:12 8 PIECE OF HARDWARE, THERE'S LOTS OF CONFIGURATION THAT HAS TO  
03:42:16 9 HAPPEN TO THAT SWITCH.

03:42:18 10 AND THE CONFIGURATION, WHAT THE COMMANDS ARE, IS STORED IN  
03:42:21 11 A CONFIGURATION FILE. IT'S NOT STORED IN RAM. SO IT'S STORED  
03:42:26 12 IN WHAT'S CALLED NONVOLATILE MEMORY. SO IF THE SWITCH LOSES  
03:42:32 13 POWER AND THEN COMES BACK UP, IT CAN REDUCE THAT SAME  
03:42:37 14 CONFIGURATION.

03:42:37 15 SO IT ALMOST GIVES THE SWITCH ITS PARTICULAR IDENTITY.

03:42:41 16 AND WHAT'S RELEVANT ABOUT THE CONFIGURATION OF A SWITCH IS  
03:42:45 17 IT'S BASICALLY A FILE OF DATA, AND YOU CAN TAKE THAT FILE FROM  
03:42:48 18 ONE SWITCH AND THEN RUN THAT SAME CONFIGURATION ON ANOTHER  
03:42:53 19 SWITCH. AND IT USES THE SAME COMMAND STRUCTURE, THEN YOU CAN  
03:42:59 20 USE THE SAME CONFIGURATION COMMAND ON A DIFFERENT SWITCH.

03:43:03 21 NOW, A REAL TEST FOR WHETHER OR NOT YOU ARE COPYING IS IF  
03:43:08 22 YOU CAN TAKE A CONFIGURATION FROM CISCO AND RUN IT ON AN ARISTA  
03:43:14 23 SWITCH, AND WHETHER THAT ARISTA SWITCH UNDERSTANDS THE  
03:43:17 24 CONFIGURATION AND ALL OF THE COMMANDS THAT ARE IN THAT  
03:43:20 25 CONFIGURATION. AND VICE VERSA, IF YOU HAVE A CONFIGURATION ON



03:43:25 1 AN ARISTA SWITCH, WHETHER YOU CAN THEN RUN IT ON A CISCO SWITCH  
03:43:29 2 AS WELL.

03:43:29 3 Q. AND BASED UPON YOUR VIEW THAT YOU DESCRIBED FOR US IN THIS  
03:43:32 4 CASE, HAVE YOU SEEN ANY EVIDENCE THAT A CONFIGURATION FROM A  
03:43:36 5 CISCO SWITCH CAN BE RUN ON AN ARISTA SWITCH?

03:43:40 6 A. YES. THAT IS PART OF WHAT THEY WERE LOOKING AT IN THIS  
03:43:44 7 TESTING FOR THE KINDS OF COMMANDS THAT WOULD GO INTO A  
03:43:49 8 CONFIGURATION.

03:43:50 9 THERE WAS ALSO EVIDENCE DISCUSSED EARLIER THIS WEEK IN  
03:43:54 10 TESTIMONY WHERE ONE OF THE THINGS THAT WAS TOLD TO THE PUBLIC  
03:43:59 11 WAS YOU COULD TAKE THE CONFIGURATION FROM A CISCO SWITCH AND  
03:44:03 12 DROP IT INTO AN ARISTA SWITCH AND IT WOULD BE ABLE TO RUN.

03:44:08 13 THERE'S OTHER EVIDENCE WHERE THEY TALK ABOUT COPYING AND  
03:44:12 14 PASTING, SORT OF SELECTING THE WHOLE CONFIGURATION AND BEING  
03:44:15 15 ABLE TO RUN IT FROM A CISCO ON TO AN ARISTA SWITCH.

03:44:19 16 Q. AND WHAT DOES THAT TELL YOU ABOUT THE SIMILARITY OF THE  
03:44:23 17 COMMANDS IN THE PRODUCTS?

03:44:27 18 A. THERE WAS EXTENSIVE SIMILARITY. TO BE ABLE TO TAKE THE  
03:44:31 19 SAME SET OF COMMANDS AND RUN IT ON TWO DIFFERENT SWITCHES FROM  
03:44:35 20 TWO DIFFERENT MANUFACTURERS REQUIRES A SIGNIFICANT AMOUNT OF  
03:44:41 21 SIMILARITY BETWEEN THEM.

03:44:42 22 Q. AND WHAT DOES THAT TELL YOU ABOUT THE STRUCTURE OF THE  
03:44:47 23 COMMANDS THEMSELVES?

03:44:48 24 A. IT TELLS ME THAT THEY ARE THE SAME. I MEAN, THE PARSERS  
03:44:52 25 THAT LOOK AT THESE COMMANDS SORRY VERY SPECIFIC, IT'S A

03:44:57 1 COMPUTER, SO IT LOOKS TO MATCH WORDS.

03:45:00 2 IF THEY ARE OFF BY A HYPHEN, THEN ONE PARSER WILL  
03:45:05 3 MISINTERPRET THE COMMAND. THEY HAVE TO BE IDENTICAL IN ORDER  
03:45:09 4 FOR THE PARSER TO BE ABLE TO PROCESS THAT SAME COMMAND.

03:45:11 5 Q. SO DR. ALMEROOTH, IN TERMS OF THE STRUCTURE OF THE COMMAND,  
03:45:19 6 WOULD THAT INCLUDE ARGUMENTS OF THE COMMAND?

03:45:21 7 A. IT WOULD. IT'S NOT SOMETHING WE'VE TALKED ABOUT, MAYBE I  
03:45:26 8 SHOULD EXPLAIN WHAT THAT MEANS.

03:45:28 9 Q. SURE.

03:45:28 10 A. SO YOU HAVE A COMMAND, AND THEN THERE'S SOMETIMES WHAT'S  
03:45:34 11 CALLED AN ARGUMENT OR A PARAMETER. SO YOU MIGHT SAY SOMETHING  
03:45:37 12 LIKE SET IP-ADDRESS. BUT THEN YOU HAVE TO GIVE IT WHAT THE IP  
03:45:42 13 ADDRESS THAT YOU ARE SETTING.

03:45:44 14 NOW, IP ADDRESS IS, THERE'S ABOUT 4 BILLION IP ADDRESSES,  
03:45:49 15 SO WHAT'S BEING COPIED HERE, THE MULTIWORD COMMAND WOULD BE THE  
03:45:54 16 SET IP-ADDRESS.

03:45:58 17 BUT THE ARGUMENT ITSELF COULD BE ANY ONE OF THE 4 BILLION  
03:46:01 18 DIFFERENT IP ADDRESSES THAT EXIST.

03:46:03 19 SO THE KEY, THE KEY TO THE COPYING IS THE MULTIWORD  
03:46:08 20 COMMAND, THAT EXPRESSION. BUT THE ARGUMENTS, I MEAN, THEY CAN  
03:46:13 21 BE WHATEVER THE PARSER ALLOWS OR WHATEVER THE OPTIONS ARE FOR  
03:46:18 22 THE SWITCH.

03:46:19 23 Q. AND WHEN YOU'RE ABLE TO COPY THIS CONFIGURATION FILE AS  
03:46:24 24 YOU SAID, WHAT DOES THAT TELL YOU ABOUT THE ARGUMENT STRUCTURE  
03:46:27 25 OF THE COMMANDS?

03:55:01 1 AND IN ADDITION TO THE DOCUMENTATION THAT WE WALKED THROUGH A  
03:55:07 2 BIT AND YOU DESCRIBED, WAS THERE ANYTHING ELSE YOU DID IN YOUR  
03:55:12 3 CONNECTION WITH THE ANALYSIS OF COPYING AND SUBSTANTIAL  
03:55:15 4 SIMILARITY?

03:55:15 5 A. THERE IS, AS PART OF MY METHODOLOGY I HOOKED UP A COMPUTER  
03:55:18 6 TO ALL OF THESE SWITCHES AND PERFORMED SOME TESTING AS WELL.

03:55:22 7 Q. NOW, THE SWITCHES, WHERE DID YOU GET ACCESS TO THOSE?

03:55:29 8 A. FOR THE ARISTA SWITCHES IT WAS AT THE LAW OFFICES OF  
03:55:33 9 ARISTA'S COUNSEL. AND THEN FOR THE CISCO SWITCHES THAT WAS AT  
03:55:37 10 THE LAW OFFICES OF CISCO'S COUNSEL.

03:55:38 11 Q. OKAY. WERE THE -- WHAT WAS THE SET UP OF THE ARISTA  
03:55:44 12 SWITCHES?

03:55:45 13 A. WELL, THE ARISTA SWITCHES, THEY WEREN'T CONNECTED TO THE  
03:55:48 14 NETWORK, THEY WERE CONNECTED TO POWER, SO IT WAS ESSENTIALLY A  
03:55:52 15 SWITCH SITTING ON THE TABLE, AND AS YOU CAN SEE IN THE UPPER  
03:55:57 16 LEFT PICTURE, IT'S CONNECTED TO POWER THROUGH THE BLACK CABLE  
03:56:02 17 IN THE BACK, AND THEN IT CONNECTED TO MY COMPUTER SO THAT I  
03:56:06 18 COULD ENTER COMMANDS ON IT. AND THAT WAS ALL THE CONNECTIONS  
03:56:09 19 THAT EXISTED.

03:56:11 20 Q. SO WOULD IT BE NOT CONNECTED TO A NETWORK, WOULD THAT HAVE  
03:56:17 21 ANY AFFECT ON YOUR ANALYSIS?

03:56:19 22 A. IT DID. IT DIDN'T ALLOW ME TO TYPE IN THE FULL SET OF  
03:56:24 23 COMMANDS THAT WERE AT ISSUE. BECAUSE WITHOUT BEING CONNECTED  
03:56:28 24 TO THE NETWORK, WITHOUT RECEIVING DATA AND BEING ABLE TO  
03:56:32 25 CONFIGURE PARTICULAR PROTOCOLS, I WAS REALLY VERY LIMITED IN

03:56:37 1 WHAT I COULD TYPE IN AND SEE.

03:56:43 2 BUT WHAT WAS USEFUL ABOUT DOING THAT TESTING WAS THAT FOR  
03:56:47 3 SOME COMMANDS I COULD COMPARE WHAT WAS IN THE MANUAL AND  
03:56:51 4 CONFIRM THAT SWITCHES WERE IMPLEMENTING COMMANDS THAT HAD  
03:56:54 5 OUTPUTS AND HELP DESCRIPTIONS THAT WERE SIMILAR TO WHAT WAS  
03:56:58 6 DESCRIBED IN THE MANUAL.

03:56:59 7 NOW THAT'S THE EXPECTATION, IT'S NOT LIKE YOU GET A MANUAL  
03:57:03 8 AND IT'S VERY DIFFERENT THAN THE WAY THAT THE SWITCH WORKS, BUT  
03:57:06 9 IT WAS GOOD TO JUST BE ABLE TO TYPE IN A FEW COMMANDS AND SEE  
03:57:09 10 THAT THAT'S WHAT WAS SUPPOSED TO BE HAPPENING.

03:57:13 11 Q. NOW IN TERMS OF THE ANALYSIS OF THE USER DOCUMENTATION?

03:57:18 12 THE COURT: COULD WE TAKE OUR BREAK BEFORE YOU MAKE  
03:57:20 13 THAT SWITCH? THAT WOULD BE GREAT.

03:57:22 14 LET'S TAKE OUR SECOND BREAK, AND LET'S MAKE IT FOR TEN  
03:57:25 15 MINUTES.

03:57:26 16 (RECESS FROM 3:57 P.M. UNTIL 4:07 P.M.)

04:07:47 17 THE COURT: WE ARE BACK ON THE RECORD AND ALL OF OUR  
04:07:49 18 JURORS ARE HERE.

04:07:50 19 MR. NELSON, YOU CAN CONTINUE WITH YOUR DIRECT EXAM.

04:07:53 20 MR. NELSON: THANK YOU, YOUR HONOR. AND I FOUND  
04:07:58 21 EXHIBIT 545 AT THE BREAK.

04:08:16 22 THE COURT: AND THE NUMBER ON THIS ONE?

04:08:18 23 MR. NELSON: IT'S EXHIBIT 545, YOUR HONOR.

04:08:20 24 THE COURT: OKAY.

04:08:24 25 MR. NELSON: MAY I PROCEED?

04:17:57 1 THE COURT: AND THE FULL VERSION IS BEING ADMITTED?

04:17:59 2 MR. NELSON: CORRECT.

04:18:00 3 THE COURT: BEING OFFERED?

04:18:01 4 MR. NELSON: YEAH. WE WILL DO IT ELECTRICALLY.

04:18:04 5 THE COURT: THANK YOU.

04:18:04 6 BY MR. NELSON:

04:18:06 7 Q. THE IF YOU JUST LOOK AT EXHIBIT 2, THE EXCERPT YOU HAVE,

04:18:13 8 DID ONE OF THE THINGS YOU MENTIONED WAS THE COMMANDS?

04:18:16 9 A. YES.

04:18:16 10 Q. SO WHERE WOULD THOSE BE SHOWN IN THE USER MANUALS?

04:18:21 11 A. THEY SHOW UP ON PAGE 3 OF THE DOCUMENT IS WHERE THEY

04:18:27 12 START. BATES NUMBER ENDING IN 7246.

04:18:32 13 Q. SO THEN IF YOU LOOK AT, BACK TO SLIDE 44, YOU WILL SEE

04:18:40 14 THERE'S LISTED THERE SEVERAL MANUALS FOR VARIOUS VERSIONS OF

04:18:46 15 THE EOS OPERATING SYSTEM THAT IS RIGHT?

04:18:48 16 A. YES, SIR.

04:18:48 17 Q. NOW DID YOU CONSIDER ALL OF THOSE WHEN YOU FORMED YOUR

04:18:52 18 OPINIONS?

04:18:53 19 A. I DID. THERE'S A USER MANUAL FOR EACH OF THE VERSIONS

04:18:57 20 IDENTIFIED. AND JUST TO START WITH THE FIRST COUPLE, 4.0.1,

04:19:04 21 4.10.0, AND THE LIST CONTINUES ON THROUGH THOSE RANGE OF

04:19:09 22 EXHIBITS AND THEY ARE ALL FOR DIFFERENT VERSIONS OF ARISTA'S

04:19:13 23 EOS. AND I LOOKED AT EACH ONE OF THEM.

04:19:15 24 Q. OKAY?

04:19:16 25 MR. NELSON: YOUR HONOR, AT THIS POINT, AND I WILL

04:19:18 1 READ THEM INTO THE RECORD. I WOULD MOVE IN EXHIBIT NUMBER 2,  
04:19:24 2 4, 5, 6, 7, 14, 8, 9, 10, 11, 13, 12, 15, 1 AND NUMBER 3.

04:19:47 3 MR. VAN NEST: NO OBJECTION, YOUR HONOR.

04:19:48 4 THE COURT: WHAT WAS THE LAST NUMBER?

04:19:50 5 MR. NELSON: 3.

04:19:50 6 THE COURT: 3?

04:19:51 7 MR. NELSON: YES.

04:19:52 8 THE COURT: AND NO OBJECTION?

04:19:53 9 MR. VAN NEST: NO OBJECTION, YOUR HONOR.

04:19:54 10 THE COURT: THANK YOU. THEY WILL ALL BE ADMITTED.

04:19:54 11 (PLAINTIFF'S EXHIBIT 1 THROUGH 15, WERE ADMITTED INTO  
04:19:56 12 EVIDENCE.)

04:19:56 13 BY MR. NELSON:

04:19:57 14 Q. SO IF WE, LET'S JUST LOOK AT THE FIRST 1, EXHIBIT  
04:20:03 15 NUMBER 2, AND IT WILL PROBABLY BE EASIER IF WE PULL IT UP ON  
04:20:06 16 THE SCREEN.

04:20:09 17 SO THE DATE ON THIS IS WHAT?

04:20:12 18 A. APRIL 8TH, 2009.

04:20:15 19 Q. AND IN TERMS OF THE VERSIONS OF OPERATING SYSTEMS THAT YOU  
04:20:21 20 LOOKED AT IN THE CASE, WERE THERE ALSO LATER VERSIONS?

04:20:24 21 A. YES, THIS IS 4.0.1. AND THERE ARE ADDITIONAL VERSIONS.

04:20:30 22 USUALLY THAT SECOND NUMBER IS INDICATIVE OF WHAT THE VERSION

04:20:36 23 IS. SO THERE'S FOUR -- MOST OF THEM -- SORRY, CAN YOU GO BACK  
04:20:42 24 TO SLIDE 44.

04:20:43 25 Q. SURE.

04:35:00 1 Q. AND CAN YOU TELL US WHAT THIS IS?

04:35:02 2 A. THIS IS A SUMMARY EXHIBIT FOR THE TECHNICAL DOCUMENTATION  
04:35:08 3 COPYING, THE USER MANUALS, AND IT HAS A SIMILAR FORMAT, IT HAS  
04:35:11 4 TWO COLUMNS, ONE FOR CISCO AND ONE FOR ARISTA, THERE ARE RED  
04:35:15 5 BOXES THAT HIGHLIGHT WHERE THERE IS COPYING FROM THE CISCO  
04:35:18 6 MANUAL TO THE ARISTA MANUAL.

04:35:21 7 AGAIN, AT THE BOTTOM OF THE CELL, FOR THE CISCO SIDE, IT  
04:35:25 8 IDENTIFIES WHAT CISCO MANUAL IT COMES FROM AND THE PAGE NUMBER.  
04:35:31 9 AND THEN FOR THE ARISTA SIDE IT IDENTIFIES WHERE THAT  
04:35:34 10 INFORMATION APPEARS IN THE ARISTA MANUALS.

04:35:37 11 AND YOU CAN SEE IN THE EXAMPLES IN THIS DEMONSTRATIVE THAT  
04:35:40 12 FOR EACH OF THE CELLS, THERE'S A NUMBER OF ARISTA MANUALS WHERE  
04:35:44 13 THIS INFORMATION APPEARS.

04:35:47 14 MR. NELSON: YOUR HONOR, AT THIS POINT I WOULD LIKE  
04:35:48 15 TO MOVE INTO EVIDENCE THE SUMMARY EXHIBIT 4795.

04:35:52 16 MR. VAN NEST: NO OBJECTION, YOUR HONOR.

04:35:53 17 THE COURT: IT WILL BE ADMITTED.

04:35:55 18 (PLAINTIFF'S EXHIBIT 4795 WAS ADMITTED INTO EVIDENCE.)

04:35:55 19 BY MR. NELSON:

04:36:02 20 Q. SO I WOULD LIKE TO TURN NOW TO YOUR HELP DESCRIPTION  
04:36:08 21 ANALYSIS AND PARTICULARLY WITH RESPECT TO THE IOS XR USER  
04:36:15 22 INTERFACE?

04:36:15 23 A. OKAY.

04:36:16 24 Q. SO WITH RESPECT TO THE IOS XR USER INTERFACE IN THE HELP  
04:36:24 25 DESCRIPTIONS, CAN YOU EXPLAIN TO US WHAT YOU DID?

04:36:25 1 A. SURE.

04:36:27 2 I LOOKED AT BOTH THE MANUALS FOR THE DESCRIPTION OF THE  
04:36:33 3 INTERFACES OR WHAT THE HELP MESSAGES WOULD BE, AND IN SOME  
04:36:40 4 INSTANCES AGAIN I CONFIRMED THAT BY TYPING THOSE INTO THE  
04:36:44 5 ARISTA SWITCHES THAT THEY WOULD BE THE SAME. AND I ALSO  
04:36:46 6 INSPECTED THE SOURCE CODE TO SEE THAT THOSE HELP DESCRIPTIONS  
04:36:50 7 WERE INCLUDED IN THE SOURCE CODE.

04:36:51 8 Q. AND -- SO DID YOU -- YOU SAID YOU LOOKED AT THE SOURCE  
04:37:05 9 CODE TO CONFIRM THAT THE HELP DESCRIPTIONS WERE THERE.

04:37:08 10 WAS ONE OF THE VERSIONS OF THE SOURCE CODE YOU LOOKED AT  
04:37:11 11 VERSION 5.1.4?

04:37:14 12 A. YES, IT WAS.

04:37:14 13 Q. OKAY. AND WHAT DID YOU FIND WITH RESPECT TO THE HELP  
04:37:21 14 DESCRIPTIONS THAT WERE IN VERSION 5.1.4 THAT YOU ALSO FOUND IN  
04:37:28 15 EOS?

04:37:29 16 A. I FOUND THAT THEY WERE THE SAME, THAT THE HELP  
04:37:32 17 DESCRIPTIONS THAT HAD BEEN IDENTIFIED WERE THE ONES THAT I  
04:37:35 18 FOUND IN THE SOURCE CODE IN 5.1.4 OF THE EOS.

04:37:40 19 Q. AND DO YOU RECALL HOW MANY THERE WERE?

04:37:42 20 A. A LITTLE MORE THAN 200, I THINK MAYBE ABOUT 216, IN THAT  
04:37:50 21 BALLPARK.

04:37:50 22 Q. OKAY. AND DO YOU RECALL WHAT THE SIMILARITY WAS BETWEEN  
04:37:55 23 WHAT YOU SAW IN IOS XR VERSION 5.1.4 VERSUS THE EOS THAT YOU  
04:38:05 24 LOOKED AT?

04:38:07 25 A. SO I LOOKED AT EOS 5.1.4 AND I LOOKED AT THE OTHER



04:38:12 1 VERSIONS AS WELL. AND THEY WERE SIMILAR ACROSS ALL OF THE  
04:38:15 2 VERSIONS.

04:38:17 3 Q. IOS XR, VERSION 5.1.4 IS WHAT I'M TALKING ABOUT?

04:38:23 4 A. YES, THAT'S RIGHT.

04:38:25 5 THE COURT: LET'S CLARIFY THAT. COULD WE GO BACK  
04:38:27 6 OVER THAT, IT'S A LITTLE MUDDLED.

04:38:30 7 MR. NELSON: YES, ABSOLUTELY.

04:38:32 8 Q. SO TALKING ABOUT THE IOS XR VERSION THAT YOU LOOKED AT FOR  
04:38:36 9 DETERMINING WHAT WAS IN THE IOS XR USER INTERFACE, OKAY?

04:38:39 10 A. OKAY. CORRECT. I UNDERSTAND.

04:38:45 11 YEAH. THE 216 THAT WERE PRESENT IN 5.1.4 OF THE IOS XR,  
04:38:49 12 SORT OF THE SOURCE OF THE COPYING, WAS THIS THE OTHER VERSIONS  
04:38:52 13 OF IOS XR AS WELL.

04:38:53 14 SO FOR EXAMPLE, 5.2 --

04:38:56 15 MR. VAN NEST: OBJECTION, YOUR HONOR.

04:38:57 16 MOVE TO STRIKE. OUTSIDE HIS REPORT.

04:39:02 17 THE COURT: I WILL LET YOU LAY A FOUNDATION FOR THAT.  
04:39:05 18 I THINK YOU'VE GOT TO EXPLAIN THAT.

04:39:07 19 BY MR. NELSON:

04:39:07 20 Q. DID YOU ALSO LOOK AT VERSION 5.2?

04:39:10 21 A. I DID.

04:39:10 22 Q. OKAY. AND WHAT'S YOUR UNDERSTANDING FOR IF A -- FIRST OF  
04:39:17 23 ALL?

04:39:18 24 MR. VAN NEST: OBJECTION, YOUR HONOR.

04:39:20 25 I MOVE TO STRIKE THE LAST ANSWER AS NOT DISCLOSED IN HIS

05:08:46 1 WAS A SEPARATE DOCUMENT.

05:08:47 2 AND THEN THERE WAS A THUMB DRIVE AND IT WAS UNCLEAR TO ME  
05:08:51 3 WHAT YOU WERE SUBMITTING IN EVIDENCE.

05:08:52 4 MR. PAK: YOUR HONOR, JUST TO BE CLEAR, 4803 AS AN  
05:08:55 5 EXHIBIT IS THE INDEX THAT WE HAVE BEEN DISCUSSING PLUS ALL OF  
05:09:00 6 THE REGISTRATION MATERIALS IN ONE.

05:09:02 7 THE COURT: HUNDREDS OF THOUSANDS OF PAGES.

05:09:04 8 MR. PAK: YES. BECAUSE IT WOULD LITERALLY BE TO THE  
05:09:09 9 WALL.

05:09:09 10 THE COURT: SO THAT'S WHY I WAS CONFUSED BECAUSE IT  
05:09:12 11 REFERENCED SEPARATE EXHIBIT NUMBERS.

05:09:13 12 MR. PAK: THEN SEPARATELY WE ALSO HAD IN OUR TRIAL  
05:09:17 13 EXHIBIT LIST EACH OF THESE REGISTERED --

05:09:17 14 THE COURT: YOU DIDN'T INTRODUCE THEM?

05:09:17 15 MR. PAK: NO, WE DIDN'T INTRODUCE THEM BECAUSE THE  
05:09:20 16 MOST EFFICIENT MECHANISM TO GET THEM IN --

05:09:20 17 THE COURT: YOU HAVE NOW COMBINED THEM AS A SINGLE  
05:09:24 18 EXHIBIT INCLUDING MANY THINGS.

05:09:25 19 MR. PAK: A SINGLE EXHIBIT. AND THAT'S WHAT WE  
05:09:26 20 DISCUSSED WITH ARISTA.

05:09:28 21 THE COURT: THAT'S WHAT I COULDN'T TELL BECAUSE  
05:09:33 22 OBVIOUSLY I WAS NOT ABOUT TO OPEN UP A THUMB DRIVE. EVER.

05:09:39 23 SO THANK YOU. I JUST DIDN'T UNDERSTAND THAT. AND I  
05:09:42 24 PRESUME THAT THE WITNESS BINDER HAD IT BECAUSE MR. LANG COULD  
05:09:47 25 TESTIFY TO IT.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) DECEMBER 2, 2016  
)  
ARISTA NETWORKS, INC., ) VOLUME 7  
)  
DEFENDANT ) PAGES 1310-1588  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: DAVID A. NELSON  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

08:32:45 1 THE COURT: I WAS SURPRISED NOT TO HEAR ANYTHING, SO  
08:32:47 2 THAT'S A GOOD ANSWER TO IT. AND YOU'VE GOTTEN -- YOU'VE HAD TO  
08:32:51 3 GET AHEAD TO MEET MY DEADLINES, AND I GREATLY APPRECIATE THAT.

08:32:55 4 MR. VAN NEST: WE DID THAT.

08:32:56 5 THE COURT: OKAY. THEN ARE WE DONE?

08:32:59 6 MR. KRISHNAN: YOUR HONOR, THERE'S ACTUALLY AN ISSUE  
08:33:01 7 FROM YESTERDAY.

08:33:02 8 SO AS YOU MIGHT RECALL YESTERDAY THERE WERE A COUPLE OF  
08:33:04 9 ISSUES WE DON'T HAVE TIME FOR. YESTERDAY THERE WERE A COUPLE  
08:33:12 10 OF WITNESSES, AND I THINK THE ONLY ONE THAT'S REALLY  
08:33:14 11 OUTSTANDING IS DR. JEFFAY. HE'S GOING ON TODAY.

08:33:17 12 THE OBJECTIONS WERE FILED TWO DAYS AGO TO BE HEARD  
08:33:20 13 YESTERDAY, BUT THOSE ARE STILL PENDING.

08:33:38 14 THE COURT: I HAVE, IN YOUR FILING FOR, THAT WAS FOR  
08:33:42 15 YESTERDAY FOR DECEMBER 1, OBJECTIONS TO SOURCE CODE FILES NEVER  
08:33:46 16 DISCUSSED BY DR. JEFFAY?

08:33:49 17 MR. KRISHNAN: CORRECT.

08:33:49 18 THE COURT: AND EXPANDING HIS OPINIONS ON THOSE FILES  
08:33:52 19 AT TRIAL. IS THAT -- OF COURSE, THAT'S THE TOPIC AND OF COURSE  
08:33:56 20 YOU'VE WRITTEN QUITE A BIT HERE.

08:33:58 21 MR. KRISHNAN: RIGHT. THERE WAS A LITTLE OVER A PAGE  
08:34:01 22 OF OBJECTIONS.

08:34:02 23 THE COURT: WELL, I THINK YOU PROPERLY ARGUED THAT  
08:34:06 24 SOURCE CODE IS NOT AT ISSUE HERE SO I DON'T KNOW WHAT THE  
08:34:08 25 PURPOSE OF HIM DISCUSSING SOURCE CODE IS.

10:55:02 1 SEQUENCING, BUT REMEMBER THERE ARE THESE HIERARCHIES. AND  
10:55:05 2 THERE ARE CHOICES ABOUT WHETHER TO PUT A COMMAND IN A  
10:55:09 3 PARTICULAR HIERARCHY OR NOT. AND ALL OF THAT IS IMPORTANT AS  
10:55:13 4 PART OF THE CREATIVE PROCESS AS WELL.

10:55:15 5 Q. SO -- THANK YOU. I WANT TO TURN NOW TO -- YOU GOT SOME  
10:55:20 6 QUESTIONS ABOUT THE TECHNICAL MANUALS?

10:55:22 7 A. YES.

10:55:22 8 Q. DO YOU RECALL THAT?

10:55:24 9 NOW, DID ARISTA DENY COPYING THE TECHNICAL MANUALS

10:55:31 10 A. NO. IN FACT, THEY ADMITTED IT. THEY APOLOGIZED FOR IT.  
10:55:35 11 THEY SUPPOSEDLY FIRED THE PERSON WHO DID AT LEAST SOME OF THE  
10:55:38 12 COPYING, BUT ULTIMATELY THEY ADMITTED TO IT, THEY ADMITTED TO  
10:55:41 13 COPYING THE MANUALS.

10:55:42 14 Q. NOW, YOU ALSO REFERENCED ON YOUR CROSS SEVERAL TIMES ABOUT  
10:55:49 15 HOW CISCO MAKES A BUNCH OF DIFFERENT PRODUCTS?

10:55:51 16 A. YES.

10:55:52 17 Q. AND DOES THAT HAVE SOME RELEVANCE TO THE NUMBER OF  
10:55:56 18 COMMANDS OR OUTPUTS OR SOME OF THE OTHER THINGS YOU ARE TALKING  
10:56:00 19 ABOUT THAT WOULD BE IN IOS?

10:56:01 20 A. IT DOES. IF YOU THINK ABOUT THE FOUR USER INTERFACES AT  
10:56:05 21 ISSUE HERE, IOS, IOS XR, IOS XE, AND NX-OS, THEY COVER A BROAD  
10:56:12 22 RANGE OF PRODUCTS.

10:56:13 23 CISCO CLEARLY MAKES MANY MORE PRODUCTS AND TYPES OF  
10:56:17 24 PRODUCTS THAN ARISTA DOES, AND ARISTA GENERALLY HAS A SERIES OF  
10:56:22 25 ETHERNET SWITCHES.

10:56:24 1 THE PROBLEM IS YOU CAN'T LOOK AT ALL OF THE CISCO MANUALS  
10:56:28 2 AND SAY, WELL, THEY ONLY TOOK THIS PIECE AND THEY ONLY TOOK  
10:56:31 3 THAT PIECE. I MEAN, SOMETIMES THE ANALOGY IS TO AN  
10:56:37 4 ENCYCLOPEDIA, THAT JUST BECAUSE YOU COPY ONE PORTION ABOUT  
10:56:41 5 ELECTRONIC TRAINS, DOESN'T MEAN THAT IT'S NOT COPYING AND IT'S  
10:56:45 6 NOT IMPORTANT BECAUSE YOU DIDN'T COPY THE WHOLE ENCYCLOPEDIA.

10:56:51 7 I ACTUALLY HAD AN EXPERIENCE WITH A STUDENT. HE TOOK MY  
10:56:55 8 CLASS, AND HE COPIED THINGS FROM MY 400 PAGE DISSERTATION INTO  
10:57:00 9 HIS HOME WORK ASSIGNMENT, WHICH WAS ONLY A COUPLE OF PAGES  
10:57:02 10 LONG.

10:57:03 11 AND WHEN I CAUGHT HIM, IT WASN'T ABOUT THAT HE TOOK ALL OF  
10:57:07 12 THE DISSERTATION, BUT ABOUT THE SIGNIFICANT PORTIONS HE DID  
10:57:11 13 TAKE AND USE IN HIS ASSIGNMENT.

10:57:13 14 Q. NOW, DID HE GET A GOOD GRADE?

10:57:16 15 A. HE DID NOT.

10:57:17 16 Q. NOW, THE -- I WANT TO TURN TO A COUPLE OF OTHER THINGS,  
10:57:23 17 THESE WERE SOME THINGS THAT YOU AND I WERE DISCUSSING  
10:57:26 18 YESTERDAY, AND I NOW HAVE THE EXHIBITS AND WE WORKED THAT ALL  
10:57:30 19 OUT.

10:57:30 20 SO THE FIRST ONE I WANT TO TALK ABOUT --

10:57:32 21 I'M NOT SURE THE COURT HAS THIS ONE YET. THIS IS 4799,  
10:57:36 22 YOUR HONOR.

10:57:36 23 THE COURT: THANK YOU.

10:57:37 24 MR. NELSON: AND WE'VE WORKED EVERYTHING OUT WITH  
10:57:40 25 THIS.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) DECEMBER 5, 2016  
)  
ARISTA NETWORKS, INC., ) VOLUME 8  
)  
DEFENDANT ) PAGES 1589-1878  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: DAVID A. NELSON  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

09:17:19 1 THE COURT: ALL RIGHT. THE LAST THING THAT I WOULD  
09:17:21 2 LIKE TO ASK, AND I DON'T KNOW WHETHER ALL THE EXHIBITS ARE IN,  
09:17:24 3 I WOULD ACTUALLY LIKE FOR ME, AND MAYBE THE JURY NEEDS IT AS  
09:17:27 4 WELL, BUT I DON'T REQUIRE IT, I WOULD LIKE A LIST OF EXHIBITS  
09:17:30 5 THAT ARE ASSOCIATED WITH EACH OF THE WORKS. BECAUSE THE JURY  
09:17:36 6 IS GOING TO HAVE TO LOOK AT THE WORKS AS A WHOLE, I DON'T EVEN  
09:17:39 7 KNOW WHERE THEY ARE IN THE EVIDENCE.

09:17:41 8 IT OCCURS TO ME, AND I ASK YOU THIS, I'M NOT REQUIRING IT,  
09:17:44 9 DOES IT MAKE SENSE TO GIVE THE JURY A SHEET THAT DIRECTS THEM  
09:17:49 10 TO WHERE THOSE EXHIBITS ARE, BECAUSE THEY ARE REQUIRED TO MAKE  
09:17:52 11 THE COMPARISON? PLEASE CONSIDER THAT.

09:17:54 12 IF YOU BOTH AGREE, THAT'S GREAT, IF YOU DISAGREE, AGAIN, I  
09:17:58 13 DON'T PICK EXHIBITS OUT TO HIGHLIGHT FOR THE JURY, IT'S NOT MY  
09:18:01 14 JOB.

09:18:02 15 MR. NELSON: THAT'S FINE, YOUR HONOR. WE CAN WORK  
09:18:04 16 THAT OUT WITH THEM.

09:18:06 17 THE COURT: GOOD. I WOULD LIKE TO KNOW WHERE THEY  
09:18:08 18 ARE.

09:18:08 19 MR. NELSON: SURE, UNDERSTOOD.

09:18:09 20 THE COURT: BECAUSE, ULTIMATELY, THAT'S GOING TO BE  
09:18:11 21 IMPORTANT FOR ME, AND I DON'T THINK I'VE EVER SEEN THAT EXHIBIT  
09:18:14 22 THAT IS THE WORK AS A WHOLE. I MEAN, DON'T EVEN KNOW WHAT THAT  
09:18:19 23 IS. BECAUSE SOME OF THESE WERE SO BIG I COULDN'T MANAGE THEM  
09:18:23 24 PHYSICALLY.

09:18:24 25 MR. NELSON: RIGHT. UNDERSTOOD, YOUR HONOR. WE WILL



11:30:35 1 YOU SEE THERE?

11:30:36 2 A. WELL, THE FIRST ONE IS IN 2014, WHICH IS WHEN YOU BEGIN TO  
11:30:39 3 GET THE VOLUME, IT REALLY TALKED ABOUT OUR INNOVATION IN HIGH  
11:30:43 4 END SWITCHING. WE HAVE ALWAYS BEEN THE LEADER, BUT AS PRODUCTS  
11:30:47 5 GET OLDER, THEN YOU GO TO THE NEXT GENERATION.

11:30:48 6 AND SO THIS WAS IN 2014, WHERE WE BEGIN TO GET OUR  
11:30:52 7 LEADERSHIP BACK IN TERMS OF THE PRODUCTS. AND IT WAS THE TOP  
11:30:59 8 AWARD FROM THE TECHNOLOGY SPOTLIGHT, THE 2014 BEST IN INTEROP.

11:31:02 9 THAT'S IMPORTANT TO US BECAUSE THAT'S THE MOST PHYSICAL  
11:31:06 10 SHOW IN THE TECHIE GROUP, IN MY OPINION, AND WE ACTUALLY WON IN  
11:31:09 11 TERMS OF THE TOP DATA CENTER SWITCH VERSUS ARISTA.

11:31:13 12 Q. SO IN THAT 2014 TIMEFRAME, AT THE TIME OF THE BEST OF  
11:31:18 13 INTEROP AWARD, WAS ARISTA'S SWITCH CONSIDERED IN THAT  
11:31:23 14 COMPETITION AS WELL?

11:31:23 15 A. YES.

11:31:24 16 Q. AND WHOSE SWITCH WON AS THE BEST IN THE SHOW?

11:31:26 17 A. WE WON AS BEST IN SHOW.

11:31:28 18 Q. NOW EVEN THOUGH YOUR SWITCH, THE NEXUS 9000, WAS THE BEST  
11:31:35 19 IN THE SHOW AT INTEROP IN 2014, WAS ARISTA STILL A TOUGH  
11:31:41 20 COMPETITOR OF CISCO'S AT THAT TIME?

11:31:44 21 A. ABSOLUTELY.

11:31:45 22 Q. AND WAS CISCO STILL LOSING SALES TO ARISTA AT THE TIME?

11:31:48 23 A. LOSING SALES OPPORTUNITIES, YES.

11:31:50 24 Q. NOW DID THERE COME A TIME, SIR, IN THE COMPETITION WHERE  
11:31:54 25 ARISTA WHERE YOU LEARNED THEY WERE NOT COMPETING FAIRLY WITH

11:31:57 1 YOU?

11:31:57 2 A. YES, THERE WAS.

11:31:58 3 Q. AND WHEN WAS THAT?

11:31:59 4 A. THE FIRST INDICATION WAS IN THE SPRING OF 2014 AS A RESULT  
11:32:05 5 OF AN ARTICLE THAT OUR CHIEF LEGAL COUNSEL BROUGHT TO MY  
11:32:08 6 ATTENTION WITH SOME CHALLENGES.

11:32:11 7 Q. AND WHAT DID YOU LEARN AT THAT TIME, JUST GENERALLY?

11:32:13 8 A. WELL, WHAT WE LEARNED WAS THAT THE SENIOR MANAGEMENT HAD  
11:32:16 9 STATED THAT --

11:32:18 10 Q. THE SENIOR MANAGEMENT OF CISCO OR OF ARISTA?

11:32:20 11 A. I'M SORRY, OF ARISTA, HAD STATED VERY PUBLICLY THAT THEY  
11:32:24 12 DIDN'T COMPETE WITH CISCO IN THE TRADITIONAL WAY, TO DO THAT  
11:32:28 13 WOULD NOT HAVE GOTTEN GOOD RESULTS, IT WOULD HAVE TAKEN THEM  
11:32:32 14 15,000 ENGINEERS AND 15 YEARS TO GET -- TO BE ABLE TO COMPETE  
11:32:37 15 AGAINST US IN THAT WAY. SO IT WAS REALLY ONE THAT KIND OF SET  
11:32:41 16 OFF THE WARNING SIGNALS AND ALARM BELLS ON IT.

11:32:45 17 AS WE STARTED TO DELVE INTO IT MORE, WE THEN FOUND THAT  
11:32:48 18 OTHER PEOPLE AT ARISTA, A CHIEF TECHNICAL OFFICER AS AN  
11:32:53 19 EXAMPLE, PRIOR CISCO EMPLOYEE, GOOD PERSON BY THE WAY, HAD  
11:32:56 20 ACTUALLY SAID THAT BILL WOULD NEED TO PUT THE ARISTA PRODUCT IN  
11:33:00 21 OUR NETWORKS AS ALMOST LIKE A DROP-IN CAPABILITY BECAUSE IT WAS  
11:33:04 22 SO CISCO PROPRIETARY IOS-LIKE. I DIDN'T USE PROPRIETARY, BUT  
11:33:10 23 HE SAID IOS-LIKE, WHERE THE CUSTOMERS COULD USE THIS, IS VERY  
11:33:14 24 IMPORTANT.

11:33:14 25 THEN AS THIS OCCURRED, I REACHED BACK TO MY TEAM AND I

11:33:17 1 SAID, THIS IS REALLY KEY BECAUSE WE COMPETE ON INNOVATIONS, NOT  
11:33:21 2 ON LAWSUITS. AND I PUSHED HIM VERY HARD ABOUT THE WERE PATENTS  
11:33:25 3 THEY WERE BRINGING TO MY ATTENTION REALLY MEANINGFUL, DID THEY  
11:33:28 4 REALLY MAKE A DIFFERENCE IN THE INDUSTRY.

11:33:30 5 AND AS WE DID THAT, I REACHED BACK AND THEY CAME BACK WITH  
11:33:34 6 A DIFFERENT SET OF PATENTS AND APPROACHES. AND THEN I WANTED  
11:33:36 7 TO MAKE SURE THAT BOTH OUR OWN ENGINEERS, PEOPLE IN THE SILICON  
11:33:41 8 VALLEY, THE BUSINESS PRESS AND OVERALL AS A GROUP, WE  
11:33:43 9 CONSIDERED WHAT WE WERE DOING HERE AS NOT ONLY LEGALLY CORRECT,  
11:33:46 10 BECAUSE BY THIS TIME I WAS PRETTY SURE WE WOULD WIN ON THE  
11:33:49 11 LEGAL SIDE, BUT ALSO PERCEPTIONALLY.

11:33:52 12 SO WE TALKED TO OUR TOP ENGINEERS. I WAS HESITANT ON  
11:33:55 13 THIS, BUT IT WAS A VERY SIMILAR TO WHAT -- ONE OTHER TIME WE  
11:33:59 14 SUED A COMPANY CALLED HUAWEI A DECADE BEFORE. SO IT TOOK ABOUT  
11:34:03 15 TEN MONTHS IN TOTAL.

11:34:04 16 Q. AND WHEN YOU FOUND OUT EXACTLY WHAT ARISTA WAS DOING, IN  
11:34:06 17 YOUR VIEW, WAS AT A FAIR WAY TO COMPETE WITH CISCO?

11:34:09 18 A. WELL, IT WAS EXTREMELY UNFAIR AND VERY DISAPPOINTING.

11:34:14 19 Q. AND HOW DID THAT MAKE YOU FEEL ABOUT ARISTA AND THE FORMER  
11:34:17 20 CISCO EMPLOYEES THAT ARE AT ARISTA?

11:34:19 21 A. WELL FIRST, FROM A FINANCIAL PERSPECTIVE, IT COST US  
11:34:22 22 SALES. IT ALSO REALLY HURT BECAUSE AT CISCO WE HAD LITERALLY,  
11:34:27 23 ON OUR BEING BADGE, JUST DO THE RIGHT THING. TREAT OTHERS WITH  
11:34:31 24 RESPECT.

11:34:31 25 I TEND TO TRUST PEOPLE. WE DON'T GO LOOKING TO SEE IF

11:34:34 1 PEOPLE VIOLATE OUR PATENTS OR LOOK FOR OTHER THINGS, WE TEND TO  
11:34:38 2 TRUST PEOPLE IN THE MARKET PRETTY OPENLY. AND IT WAS EXTREMELY  
11:34:42 3 SURPRISING.

11:34:43 4 IT'S ONE THING FOR THAT TO OCCUR HALFWAY AROUND THE WORLD  
11:34:46 5 WITH PEOPLE YOU DON'T KNOW, IT'S ANOTHER FOR IT TO OCCUR FROM  
11:34:48 6 PEOPLE WHO YOU ARE FRIENDS WITH WHO STOLE FROM YOU, AND THEY  
11:34:53 7 DID STEAL FROM US.

11:34:54 8 Q. WAS IT A HARD DECISION FOR YOU TO FILE THIS CASE, SIR?

11:34:57 9 A. IT WAS EXTREMELY HARD. I WAS PROBABLY THE LAST ONE TO  
11:35:01 10 SAY, YOU ARE RIGHT, WE HAVE TO DO THIS.

11:35:03 11 Q. WHY WAS IT SO HARD TO FILE THE CASE?

11:35:04 12 A. I BELIEVE ON COMPETING ON INNOVATION, AND I BELIEVE WE  
11:35:08 13 HAVE DONE THAT, I THINK, EXTREMELY WELL.

11:35:10 14 ALSO, I'M HESITANT THAT WHEN YOU DO SOMETHING, YOU WANT TO  
11:35:14 15 BE SURE YOU LEGALLY ARE CORRECT BUT ALSO PEOPLE PERCEIVE IT TO  
11:35:19 16 BE CORRECT.

11:35:19 17 AND IT'S HARD ACCUSING PEOPLE WHO YOU ARE FRIENDS WITH,  
11:35:21 18 AND THEY STILL ARE MY FRIENDS, OF STEALING FROM YOU.

11:35:24 19 Q. SO WHAT YOU ULTIMATELY TIPPED YOU TOWARDS FILING THE CASE,  
11:35:28 20 WHAT WAS THE DECIDING FACTORS, OR WHAT WERE THE DECIDING  
11:35:32 21 FACTORS?

11:35:32 22 A. I THINK IT'S THE COMBINATION --

11:35:34 23 MR. VAN NEST: OBJECTION, YOUR HONOR. DISCOVERY.

11:35:37 24 THIS HAS BEEN PRIVILEGED AND HAS BEEN ASSERTED ON THESE  
11:35:40 25 DISCUSSIONS.

11:35:41 1 MR. DESMARAIS: I'M NOT ASKING FOR WHAT HE LEARNED  
11:35:43 2 FROM HIS LAWYERS I'M ASKING ABOUT HIS PERSONAL --

11:35:45 3 THE COURT: I'M NOT GOING ON ALLOW THE WITNESS TO GO  
11:35:48 4 INTO THIS AREA IF IT WAS NOT ALLOWED DURING DISCOVERY. THE  
11:35:51 5 OBJECTION IS SUSTAINED.

11:35:52 6 MR. DESMARAIS:

11:35:52 7 Q. WAS THE ULTIMATE DECISION TO FILE THE LAWSUIT YOUR  
11:35:55 8 DECISION AS CEO SIR?

11:35:57 9 A. YES, IT WAS.

11:35:58 10 Q. NOW YOU SAID EARLIER YOU KNEW JAYSHREE ULLAL FROM HER TIME  
11:36:04 11 AT CISCO. PRIOR TO FILING THE LAWSUIT, DID YOU CALL ARISTA OR  
11:36:09 12 CALL MS. ULLAL TO DISCUSS?

11:36:11 13 A. NO, I DID NOT.

11:36:13 14 Q. AND WHY NOT?

11:36:14 15 A. THIS WAS SO BLATANT. IT WASN'T A PATENT, IT WAS FOUR  
11:36:22 16 MAJOR PATENTS. IT WASN'T JUST OUR PROPRIETARY COMMAND-LINE  
11:36:26 17 INTERFACE, IT WAS THE COPYING OUR MANUALS, EVEN THE TYPOS IN  
11:36:30 18 THE MANUALS, EVEN THE HELP SCREENS, EVEN THE HIERARCHIES WE  
11:36:34 19 USED, ET CETERA.

11:36:34 20 AND IT HAD TO BE KNOWN BECAUSE A NUMBER OF THE ENGINEERS  
11:36:38 21 AT ARISTA ACTUALLY DID SOME OF THESE PATENTS, THE LEADERS AT  
11:36:43 22 ARISTA ACTUALLY SUPERVISED THOSE ENGINEERS. EVERYONE HAD SEEN  
11:36:47 23 IN THIS GROUP AT THE TOP MANAGEMENT, INCLUDING THE BOARD OF  
11:36:50 24 DIRECTORS, OUR DECISION TO HOLD HUAWEI ACCOUNTABLE, A CHINESE  
11:36:55 25 COMPETITOR WHO VERY BLATANTLY COPIED OUR CLI CAPABILITIES, OUR

11:36:59 1 PATENTS, SAME TYPE OF THING, THE MISTAKES AND SPELLING IN THE  
11:37:04 2 MANUALS, SOURCE CODE, ET CETERA. AND THEY KNEW THAT WE HELD  
11:37:08 3 THEM VERY ACCOUNTABLE FOR DOING THIS, AND THAT INCLUDES EVEN  
11:37:13 4 THEIR BOARD MEMBERS WHO WERE EITHER TESTIFYING IN THE CASE  
11:37:16 5 AGAINST HUAWEI OR HEADED UP OUR LEGAL AND BUSINESS DEVELOPMENT  
11:37:20 6 AND WERE PART OF THIS DECISION ON HOW WE SUED HUAWEI. SO IT  
11:37:24 7 WAS THE BREADTH AND DEPTH.

11:37:26 8 AND IN MY MIND, THERE WAS NO DOUBT THAT THEY KNEW EXACTLY  
11:37:29 9 WHAT THEY WERE DOING AND A PHONE CALL WOULD NOT HAVE GOTTEN THE  
11:37:32 10 RESULTS.

11:37:32 11 AND CANDIDLY, IT'S SHOWN SO FAR. HERE WE ARE APPROACHING  
11:37:36 12 A YEAR AND A HALF, TWO YEARS LATER AND STILL HAVE NOT GOT  
11:37:39 13 ARISTA TO STOP.

11:37:39 14 Q. NOW OVER THE YEARS AS YOU HAVE BEEN LEADING CISCO, HAVE  
11:37:43 15 OTHER CISCO EMPLOYEES LEFT CISCO TO GO TO OTHER COMPANIES TO  
11:37:48 16 COMPETE WITH CISCO?

11:37:49 17 A. UNFORTUNATELY, YES, MANY.

11:37:51 18 Q. CAN YOU NAME A FEW OF THEM?

11:37:52 19 A. YES. I THINK IF YOU WERE TO LOOK ACROSS THE VALLEY, IN  
11:37:56 20 THE AREA OF -- JUNIPER IS A REALLY TOUGH COMPETITOR AND HAS  
11:38:00 21 BEEN FOR OVER A DECADE.

11:38:01 22 Q. ACTUALLY, LET ME STOP YOU THERE AND LET'S JUST MAKE A  
11:38:04 23 QUICK LIST.

11:38:09 24 SO YOU SAID JUNIPER, LET ME WRITE THAT DOWN. TELL US A  
11:38:16 25 LITTLE BIT ABOUT SOME OF THE CISCO FOLKS WHO WENT OVER TO

11:38:20 1 JUNIPER OR ARE RUNNING JUNIPER.

11:38:22 2 A. WELL, I THINK THEIR CEO IS EX-CISCO. THEY PROBABLY HAVE  
11:38:29 3 TWO OR FOUR BOARD MEMBERS THAT ARE EX-CISCO, A LOT OF THEIR  
11:38:34 4 ENGINEERING TALENT IS EX-CISCO.

11:38:36 5 Q. HAVE YOU HEARD OF A COMPANY CALLED VMWARE?

11:38:39 6 A. YES.

11:38:39 7 Q. TELL US A LITTLE BIT ABOUT VMWARE?

11:38:42 8 A. THEY ARE A VERY IMPORTANT PLAYER IN THIS AREA OF SOFTWARE  
11:38:44 9 DEFINED NETWORKS AND APPLICATIONS INFRASTRUCTURE. THEY WERE A  
11:38:51 10 PARTNER WITH US WITH DMC AND THEN COMPETED AGAINST US. WE HAVE  
11:38:56 11 CISCO EMPLOYEES THERE AT THE CHIEF OPERATING OFFICER LEVEL, AND  
11:39:04 12 FOR A WHILE WE HAD A FAIR AMOUNT OF OUR TEAM IN A JOINT  
11:39:06 13 DEVELOPMENT WITH VMWARE.

11:39:06 14 Q. HAVE YOU HEARD OF BLUEJEANS NETWORKS?

11:39:08 15 A. YEAH. THAT'S A COMPETITOR, AGAIN, CEO AND MULTIPLE PEOPLE  
11:39:12 16 IN THE ORGANIZATION, IN THE VIDEO CONFERENCING, THAT  
11:39:17 17 TELEPRESENCE-TYPE OF CAPABILITY THAT WE TALKED ABOUT BEFORE.

11:39:19 18 Q. HAVE YOU HEARD OF VIPTELA?

11:39:22 19 A. YEAH, THEY ARE A GOOD COMPETITOR IN THE AREA OF, I  
11:39:28 20 DESCRIBE IT AS WIRELESS CAPABILITY IN USER COMPUTING. AGAIN, A  
11:39:33 21 LOT OF CISCO PEOPLE, MAYBE AS MANY AS FIVE OR SIX OR SEVEN OF  
11:39:37 22 THEIR TOP MANAGEMENT TEAM AT CISCO, EX-CISCO.

11:39:41 23 Q. HAVE YOU HEARD OF SKYPE?

11:39:42 24 A. YEAH, IT WAS A COMPANY THAT'S A COMPETITOR OF OURS BOUGHT  
11:39:47 25 BY MICROSOFT. THE CEO THERE, TONY BATES, A REALLY GOOD PERSON,

11:39:52 1 VERY MUCH A PEER TO JAYSHREE IN TERMS OF THAT, AGAIN IN THE  
11:39:57 2 VIDEO AREA.

11:39:57 3 Q. HAVE YOU EVER HEARD OF AVAYA?

11:39:59 4 A. YEAH, A GOOD COMPETITOR IN THE VOICE SEGMENT OF THE  
11:40:03 5 BUSINESS.

11:40:04 6 I THINK BOTH THE -- A MEMBER OF THE BOARD FROM ARISTA IS  
11:40:09 7 ON THAT, CHARLIE GIANCARLO, CEO THERE FOR A WHILE. AND THEN  
11:40:14 8 KEVIN KENNEDY IS THEIR CEO, THERE FOR A NUMBER OF YEARS. GOOD  
11:40:19 9 COMPETITOR.

11:40:20 10 Q. NOW LET'S STOP THERE. IF WE WANTED TO CONTINUE MAKING A  
11:40:23 11 LIST OF COMPANIES WHERE CISCO EMPLOYEES HAVE LEFT CISCO TO GO  
11:40:27 12 COMPETE AGAINST CISCO AT ANOTHER COMPANY, HOW MANY COMPANIES  
11:40:30 13 COULD WE PUT ON THIS LIST?

11:40:32 14 A. I WOULD SAY PROBABLY SEVERAL DOZEN.

11:40:36 15 Q. NOW LOOKING AT THE LIST THAT WE HAVE MADE, LET'S TAKE THE  
11:40:47 16 TOP TWO JUNIPER AND VMWARE. DO THEY COMPETE WITH YOU IN THE  
11:40:52 17 DATA CENTER ALONG WITH ARISTA?

11:40:53 18 A. ABSOLUTELY. JUNIPER IS VERY TOUGH, AND ROUTING AND  
11:41:01 19 SWITCHING HAVE BEEN PROBABLY THE TOUGHEST COMPETITOR YEAR IN  
11:41:04 20 AND YEAR OUT WITH THE LAST USER INTERFACE.

11:41:08 21 Q. NOW, WOULD YOU CONSIDER THESE PEOPLE AND THE OTHER SEVERAL  
11:41:13 22 DOZEN TOUGH COMPETITORS?

11:41:14 23 A. OH, ABSOLUTELY.

11:41:15 24 Q. AND IN THE DATA CENTER, DO JUNIPER AND VMWARE TAKE SALES  
11:41:19 25 FROM CISCO IN SOME ACCOUNTS?



11:41:21 1 A. ABSOLUTELY.

11:41:22 2 Q. NOW DID YOU SUE ANY OF THESE OTHER COMPANIES SIMPLY

11:41:25 3 BECAUSE CISCO EMPLOYEES LEFT CISCO TO GO TO ANOTHER COMPANY TO

11:41:28 4 COMPETE AGAINST YOU, WHERE YOU LOST SALES?

11:41:31 5 A. NO, WE DID NOT.

11:41:32 6 Q. AS FAR AS YOU KNOW AT THESE OTHER COMPANIES, DID THE

11:41:38 7 FORMER CISCO EMPLOYEES WHO ARE NOW AT THOSE COMPANIES COMPETING

11:41:42 8 AGAINST CISCO, DID THEY TAKE INTEREST CISCO INTELLECTUAL

11:41:45 9 PROPERTY WITH THEM?

11:41:45 10 A. NOT TO THE BEST OF MY KNOWLEDGE, WE HAVE NO INDICATION

11:41:49 11 THAT THAT THEY DID.

11:41:51 12 MR. DESMARAIS: YOUR HONOR, I WOULD LIKE TO MARK THIS

11:41:53 13 AS A DEMONSTRATIVE. WHAT'S THE NEXT NUMBER? 4826.

11:41:58 14 THE COURT: OF COURSE.

11:41:58 15 (PLAINTIFF'S EXHIBIT 4826 WAS MARKED FOR IDENTIFICATION.)

11:42:01 16 MR. DESMARAIS:

11:42:01 17 Q. NOW TURNING THEN BACK TO ARISTA, IS IT NECESSARY FOR

11:42:05 18 ARISTA TO COPY CISCO'S CLI OR USER MANUALS OR OTHER USER

11:42:13 19 INTERFACE FEATURES IN ORDER TO COMPETE WITH CISCO LIKE THESE

11:42:16 20 OTHER COMPANIES?

11:42:17 21 A. BY COPYING YOU ARE SAYING NOT CISCO-LIKE OR THE OVERALL

11:42:23 22 APPROACH, IS IT NECESSARY TO STEAL THE COMMANDS TO INFRINGE

11:42:26 23 UPON OUR PATENTS TO COPY, LITERALLY, THE USER MANUALS, THE

11:42:31 24 HIERARCHIES, THE HELPDESC SCREENS, THE ANSWER IS NO. ALL

11:42:36 25 COMPANIES USE A COMBINATION OF DIFFERENT WAYS OF TAKING THE

11:42:39 1 COMPLEXITY OUT OF THOSE COMPUTER SYSTEMS, AND OTHER PEOPLE HAVE  
11:42:43 2 BEEN ABLE TO DO THIS IN DIFFERENT WAYS WITHOUT BLATANT COPYING  
11:42:48 3 ON CATEGORIES.

11:42:50 4 Q. NOW YOU HAVE BEEN WITH CISCO SINCE 1991. IN THAT TIME,  
11:42:54 5 HOW MANY CASES LIKE ARISTA HAVE YOU SEEN?

11:42:55 6 A. JUST ONE OTHER.

11:42:56 7 Q. IN GENERAL TERMS, WHAT WAS THAT OTHER CASE?

11:43:01 8 A. IT'S A CASE WITH A CHINESE MANUFACTURER CALLED HUAWEI.  
11:43:03 9 VERY, VERY SIMILAR TO ARISTA IN THE FACT THAT THEY COPIED OUR  
11:43:07 10 COMMAND LINED INTERFACE CAPABILITIES, A NUMBER OF OUR PATENTS,  
11:43:13 11 SIMILAR IN THAT THEIR USER MANUALS ACTUALLY HAD THE SAME TYPE  
11:43:17 12 OF MISTAKES IN OUR USER MANUALS, WHICH MEANS THEY DIDN'T EVEN  
11:43:22 13 READ THEM OR CORRECT THEM. SIMILAR HELP SCREENS.

11:43:24 14 THEY DID STEAL SOURCE CODE. THEY DID NOT HAVE THE NUMBER  
11:43:27 15 OF EXECUTIVES THAT WERE AT CISCO. SO THEY MAY NOT HAVE BEEN  
11:43:30 16 AWARE OF OUR PATENTS, THEY MAY NOT, THERE WAS NO CASE BEFORE  
11:43:33 17 THAT ON US HOLDING PEOPLE VERY ACCOUNTABLE FOR OUR PROPRIETARY  
11:43:39 18 COMMAND LINE INTERFACE TYPE CAPABILITIES.

11:43:41 19 SO SIMILAR IN MOST WAYS, DIFFERENT IN PERHAPS THAT THEY  
11:43:46 20 DID NOT HAVE THE PRIOR CISCO EXECS OR KNOWLEDGE OF OUR PATENTS  
11:43:51 21 AND OUR PRODUCT STRENGTH LIMITATION.

11:43:52 22 Q. WOULD YOU TURN IN YOUR BINDER TO TRIAL EXHIBIT 4671, IT'S  
11:43:57 23 ALREADY ADMITTED, SO I WILL PUT IT UP ON THE OVERHEAD  
11:44:00 24 PROJECTOR.

11:44:04 25 IS THIS THE COMPLAINT CISCO FILED AGAINST HUAWEI?

11:44:07 1 A. YES, IT IS.

11:44:08 2 Q. WHEN WAS THE COMPLAINT FILED?

11:44:09 3 A. THE DATE UP HERE IN THE RIGHT IS JANUARY 22ND, 2003.

11:44:14 4 Q. AND IS THAT COMPLAINT A PUBLIC DOCUMENT?

11:44:17 5 A. YES, IT IS.

11:44:18 6 Q. LET'S TAKE A LOOK, IF WE COULD, AT WHAT CISCO ALLEGED IN

11:44:24 7 THAT COMPLAINT ON PARAGRAPH 15. WHAT DID CISCO ALLEGE IN THAT

11:44:30 8 COMPLAINT AGAINST HUAWEI, IN THE VERY FIRST SENTENCE OF

11:44:33 9 PARAGRAPH 15?

11:44:33 10 A. IS IT ALL RIGHT TO JUST READ OFF THE SCREEN HERE?

11:44:36 11 THE COURT: IT'S JUST FINE TO LOOK AT IT ON THE

11:44:38 12 SCREEN, YES, ABSOLUTELY.

11:44:39 13 THE WITNESS: SO PARAGRAPH 15, A KEY COMPONENT OF

11:44:42 14 COPYRIGHTED IOS SOFTWARE PROGRAMS IS THE COMMAND-LINE INTERFACE

11:44:44 15 OR CLI.

11:44:47 16 Q. AND THEN IF WE LOOK DOWN AT PARAGRAPH 17, WHAT DOES CISCO

11:44:51 17 ALLEGE AGAINST HUAWEI IN THE VERY FIRST SENTENCE OF

11:44:55 18 PARAGRAPH 17?

11:44:57 19 A. DEFENDANTS HAVE ENGAGED IN WHOLESALE COPYING OF CISCO'S

11:45:01 20 CLI.

11:45:01 21 Q. AND THEN IF WE CONTINUE ON PARAGRAPH 17, WHAT IS THE FIRST

11:45:06 22 COMPLETE SENTENCE IN THE TOP OF PAGE 8 OF THE COMPLAINT SAY

11:45:12 23 ABOUT HUAWEI'S ALLEGATIONS OF COPYING?

11:45:15 24 A. JUST READING THE SENTENCE, "A COMPARISON OF THE

11:45:18 25 COMMAND-LINE INTERFACE OF THE OPERATING SYSTEM FOR QUIDWAY

11:45:20 1 ROUTERS, SWITCHES AND OTHER PRODUCTS THAT USE VRP, AND CISCO'S  
11:45:27 2 CLI REVEALS REPEATED INCIDENTS OF SLAVISH COPYINGING."

11:45:34 3 Q. SO IS THERE ANY DOUBT THAT THE HUAWEI CASE WAS ABOUT  
11:45:41 4 HUAWEI'S COPYING OF CISCO'S CLI?

11:45:43 5 A. IT WAS ONE OF THE THINGS. BUT AGAIN, IT WAS A VERY BROAD  
11:45:48 6 BLATANT COPYING OF MANY, MANY AREAS, BUT THE CLI WAS A LARGE  
11:45:53 7 COMPONENT, YES.

11:45:53 8 Q. AND HOW DID THE HUAWEI CASE RESOLVE?

11:45:55 9 A. HUAWEI ADMITTED THAT THEY HAD COPIED OUR PATENTS, OUR  
11:46:02 10 PRODUCTS, OUR MANUALS, OUR SOURCE CODE, AND COMMITTED TO FIXING  
11:46:06 11 THEM. AND WERE HELD ACCOUNTABLE FOR MAKING THOSE CHANGES BY  
11:46:12 12 THE COURT.

11:46:12 13 Q. AND DID THEY AGREE TO STOP?

11:46:13 14 A. YES, THEY DID.

11:46:14 15 Q. AND THIS CASE HAS BEEN PENDING FOR A WHILE, HAS ARISTA  
11:46:18 16 AGREED TO STIPULATE?

11:46:19 17 A. NO, THEY HAVE NOT.

11:46:20 18 Q. NOW THERE WAS A TIME WHEN ANOTHER COMPANY, DIGITAL  
11:46:24 19 EQUIPMENT CORPORATION, WAS USING CISCO'S CLI AND USER MANUALS?

11:46:29 20 A. YES, THERE WAS.

11:46:29 21 Q. AND WHY WERE THEY DOING THAT?

11:46:31 22 A. THIS WAS PROBABLY IN THE EARLY 90'S, THEY WERE A CISCO  
11:46:39 23 PARTNER, WE AUTHORIZED THEM TO USE OUR CLI AND OUR USER  
11:46:47 24 MANUALS.

11:46:47 25 Q. AND DID YOU, YOURSELF, SIGN A 1992 AGREEMENT WITH DIGITAL

11:46:51 1 EQUIPMENT THAT AUTHORIZED THEM TO USE THE USER MANUALS AND THE  
11:46:53 2 CLI?

11:46:53 3 A. YES, I ACTUALLY DID. I HAD FORGOTTEN ABOUT THAT, I KNEW  
11:46:57 4 THAT I DID THE PARTNERSHIP WITH DIGITAL AND IT WAS A  
11:47:00 5 MULTI-YEARS AGREEMENT. I ACTUALLY SIGNED THE AGREEMENT TO DO  
11:47:03 6 THAT AND THEN INITIALLED EACH OF THE PAGES THAT WERE THE TERMS  
11:47:06 7 OF THE AGREEMENT.

11:47:06 8 Q. SO IF DIGITAL EQUIPMENT CORPORATION WAS USING CISCO'S CLI,  
11:47:12 9 AND USER MANUALS AFTER 1992, WAS THAT WITH YOUR AUTHORIZATION?

11:47:16 10 A. COMPLETE AUTHORIZATION.

11:47:17 11 Q. AS A PARTNER OF YOURS AT THE TIME?

11:47:20 12 A. ABSOLUTELY.

11:47:20 13 Q. DID ANYONE AT CISCO SIMILARLY AUTHORIZE ARISTA TO USE YOUR  
11:47:24 14 CLI AND YOUR USER MANUALS AND THE OTHER THINGS THAT ARE ACCUSED  
11:47:28 15 OF IN THIS CASE?

11:47:28 16 A. NO, WE DID NOT.

11:47:30 17 Q. NOW HAS ARISTA'S COPYING OF CISCO'S CLI AND USER  
11:47:35 18 INTERFACES FEATURES AND MANUALS AND ALL OF THAT CAUSED CISCO  
11:47:39 19 ANY HARM?

11:47:39 20 A. PRETTY DRAMATIC HARM.

11:47:41 21 Q. JUST BRIEFLY, BECAUSE WE JUST HEARD FROM A DAMAGES EXPERT,  
11:47:45 22 I'M NOT ASKING YOU TO QUANTIFY IT, BUT JUST BRIEFLY, WHAT KIND  
11:47:49 23 OF HARM HAS ARISTA'S COPYING HARMED CISCO?

11:47:51 24 A. SO I TEND TO THINK OF IT AS A SALES GUY, BECAUSE I'M A  
11:47:53 25 SALES GUY AT HEART.

11:47:55 1 WHAT IT ALLOWED THEM TO DO WAS TO GET INTO ACCOUNTS  
11:47:58 2 EARLIER THAN THEY WOULD HAVE BEEN ABLE TO OTHERWISE. THEY WERE  
11:48:01 3 ABLE TO GO IN AND SAY, I'M NOT JUST CISCO-LIKE, LITERALLY YOU  
11:48:04 4 CAN DROP IN THE PRODUCTS, AND IT'S CISCO, AS IT TURNED OUT.

11:48:07 5 AND IT ALLOWED THEM MUCH QUICKER ACCESS IN TERMS OF TIME  
11:48:10 6 TO MARKET. AND IT HURT OUR IMAGE IN TERMS OF PEOPLE SAYING,  
11:48:15 7 WAIT A MINUTE, THIS COMPANY IS INNOVATIVE AND THEY ARE ACTUALLY  
11:48:18 8 MOVING FASTER THAN YOU ARE FROM FROM THAT PERSPECTIVE.

11:48:20 9 AND IT IMPACTED PROBABLY OUR REVENUES AND SERVICES IN A  
11:48:25 10 BIG WAY IN MANY OF THE LARGE ACCOUNTS.

11:48:26 11 Q. AND YOUR PRICES AS WELL?

11:48:29 12 A. WHEN SOMEBODY GETS TO MARKET A LITTLE BIT QUICKER THAN YOU  
11:48:33 13 DO WITH THE CATEGORY, AND IN MY OPINION TAKES WHAT WE HAD  
11:48:40 14 INVESTED WHICH WAS A HUGE AMOUNT, TO GAIN A COMPETITIVE  
11:48:43 15 ADVANTAGE, YOU THEN HAVE TO COMPETE MORE ON PRICE THAN YOU  
11:48:43 16 WOULD OTHERWISE. THE MARGINS WERE GOOD, THE OTHER COMPANIES  
11:48:48 17 WERE GOOD, BUT THEY WOULD HAVE DONE A LOT BETTER WITHOUT THIS,  
11:48:48 18 FOR US.

11:48:51 19 Q. THANK YOU, MR. CHAMBERS.

11:48:52 20 MR. DESMARAIS: NO FURTHER QUESTIONS, YOUR HONOR.

11:48:54 21 THE COURT: THANK YOU, SIR.

11:48:55 22 CROSS-EXAMINATION?

11:49:03 23 MR. VAN NEST: WE'VE GOT SOME BINDERS, YOUR HONOR.

11:49:05 24 THE COURT: OKAY. I'VE COME TO LOOK FORWARD TO IT.

11:49:23 25 MR. VAN NEST: MAY I PROCEED, YOUR HONOR?

02:39:23 1 WE WILL MARK IT, YOUR HONOR, AS DEMONSTRATIVE 9075, AND  
02:39:27 2 MR. SILBERT CAN WRITE THAT ON THERE.

02:39:29 3 THE COURT: THANK YOU.

02:39:30 4 (DEFENDANT'S EXHIBIT 9075 WAS MARKED FOR IDENTIFICATION.)

02:39:32 5 **CROSS-EXAMINATION**

02:39:32 6 BY MR. PAK:

02:39:51 7 Q. GOOD TO SEE YOU AGAIN, MR. DUDA.

02:39:52 8 A. GOOD TO SEE YOU.

02:39:53 9 Q. NOW FIRST OF ALL, YOU STILL STAND BY ALL OF THE TESTIMONY  
02:39:56 10 THAT YOU HAVE GIVEN IN THIS TRIAL, CORRECT?

02:39:59 11 A. YES, OF COURSE.

02:40:00 12 Q. AND YOU STILL STAND BY YOUR TESTIMONY THAT ARISTA COPIED  
02:40:04 13 SOME OF CISCO'S CLI COMMANDS FROM CISCO'S SOURCES AND PUT IT  
02:40:09 14 INTO ARISTA PRODUCTS, CORRECT?

02:40:10 15 A. THAT'S RIGHT.

02:40:11 16 Q. AND YOU STILL STAND BY YOUR TESTIMONY THAT ARISTA DECIDED  
02:40:15 17 TO EMBRACE CISCO IOS CLI AS THE MODEL FOR ARISTA'S CLI, TRUE?

02:40:22 18 A. THAT'S RIGHT.

02:40:23 19 Q. AND ISN'T IT ALSO TRUE THAT WHEN IT CAME TO COPYING  
02:40:27 20 CISCO'S CLI AND PUTTING IT INTO ARISTA SWITCHES, YOU AND OTHERS  
02:40:32 21 AT ARISTA MADE THE DECISION NOT TO INNOVATE; ISN'T THAT TRUE?

02:40:35 22 A. WELL, WE DIDN'T COPY THE WHOLE CLI OR ANYTHING CLOSE. AND  
02:40:40 23 WE INNOVATED IN MANY WAYS IN OUR CLI.

02:40:43 24 Q. ISN'T IT TRUE, SIR, THAT YOU HAVE SAID IN DOCUMENTS, THAT  
02:40:48 25 WHEN IT CAME TO COPYING CISCO'S CLI, THERE IS NO NEED TO

02:44:39 1 MR. PAK: THANK YOU, YOUR HONOR.

02:44:40 2 THAT'S ALL I HAVE.

02:44:41 3 THE COURT: ANYTHING ELSE, MR. SILBERT?

02:44:41 4 **REDIRECT EXAMINATION**

02:44:44 5 MR. SILBERT:

02:44:44 6 Q. VERY BRIEFLY, YOUR HONOR. THANK YOU.

02:44:48 7 MR. DUDA, COULD YOU EXPLAIN WHY YOU SAID WORDS TO THE  
02:44:52 8 EFFECT THAT THERE'S NO NEED TO INNOVATE WITH RESPECT TO CLI  
02:44:58 9 COMMANDS.

02:44:58 10 A. SURE. WHAT WE WERE FOCUSED ON THERE IS THE COMMANDS  
02:45:01 11 THEMSELVES. THESE ARE COMMANDS THAT ARE COMMON THROUGHOUT THE  
02:45:04 12 INDUSTRY, THAT OUR CUSTOMERS PARTICULARLY ON THE ENTERPRISE  
02:45:07 13 SIDE, ALREADY KNOW AND ARE FAMILIAR WITH. AND THERE'S NO  
02:45:12 14 REASON TO CHANGE THEM JUST FOR THE SAKE OF CHANGING THEM.  
02:45:14 15 PEOPLE ARE USED TO THEM.

02:45:16 16 LOTS OF DIFFERENT DEVICES ACCEPT THEM, AND WE SHOULD  
02:45:20 17 SIMPLY ACCEPT THE SAME COMMANDS.

02:45:22 18 Q. REFERRING TO THE TECHNOLOGY OF THE CLI ITSELF, SEPARATE  
02:45:26 19 FROM THE COMMANDS, HAS ARISTA INNOVATED IN THAT AREA?

02:45:30 20 A. WE HAVE SEVERAL INNOVATIONS IN THE CLI. IT'S WRITTEN IN  
02:45:33 21 THE LANGUAGE CALLED PYTHON THAT MAKES IT EASIER TO ADD NEW  
02:45:41 22 COMMANDS. IT PROVIDES ACCESS TO DIRECT TO UNIX PIPES, GIVES  
02:45:44 23 OUR CUSTOMERS MORE WAYS TO PROCESS THE OUTPUT OF COMMANDS.  
02:45:45 24 THERE ARE SEVERAL OTHER INNOVATIONS AS WELL.

02:45:50 25 Q. OKAY. MR. PAK SHOWED YOU EXHIBIT 187, THE E-MAIL FROM



03:42:00 1 TRYING TO GET HOW THE 7500 SWITCH RELATES TO THE 7100 THAT'S --

03:42:07 2 A. OH, OKAY.

03:42:08 3 Q. ARE THEY THE SAME MODEL JUST -- SAME FAMILY?

03:42:11 4 A. THE 7500 IS THE CHASSIS WITH A DIFFERENT SHIP SET AND THE

03:42:16 5 7100 IS THE PIZZA BOX, THE FIXED CONFIGURATION.

03:42:18 6 Q. OKAY. SO THAT'S THE SECOND ONE YOU TALKED ABOUT?

03:42:24 7 A. SORRY, THAT?

03:42:25 8 Q. THE 7100?

03:42:28 9 A. THE 7100 IS THE PIZZA BOX.

03:42:30 10 Q. OKAY. SO NOW, SIR, IF YOU GO TO THE NINTH PAGE OF THAT,

03:42:48 11 AND YOU WILL SEE THAT THERE'S A COMPARISON HERE, ARISTA'S

03:42:51 12 SUMMARY OF THE ARISTA 7100 VERSUS AN HP SWITCH; DO YOU SEE

03:42:55 13 THAT?

03:42:56 14 A. OKAY.

03:42:58 15 Q. RIGHT. SO THE FIRST THING THERE IS ARISTA SAYING WE HAVE

03:43:02 16 ULTRALOW LATENCY 600 TO 700 NANOSECONDS; IS THAT RIGHT?

03:43:08 17 A. YES.

03:43:08 18 Q. AND THEN OVER ON THE HP SIDE, IN COMPARISON YOU SAY, IT'S

03:43:14 19 GOT HIGH LATENCY, I BELIEVE THAT'S 29 MICROSECONDS; IS THAT

03:43:19 20 RIGHT?

03:43:19 21 A. YES.

03:43:19 22 Q. SO THEN THE NEXT THING IT SAYS IS ARISTA 7100 HAS IOS-LIKE

03:43:24 23 CLI; RIGHT?

03:43:25 24 A. I SEE IT SAYS THAT.

03:43:26 25 Q. AND THAT WAS TRUE, YOUR UNDERSTANDING IS THAT THE SWITCHES

03:43:30 1 BACK IN THIS 2010 TIMEFRAME HAD WHAT WOULD BE REFERRED TO AS AT  
03:43:34 2 LEAST AN IOS-LIKE CLI; RIGHT?

03:43:37 3 A. YEAH, LIKE MANY SWITCHES.

03:43:40 4 Q. OKAY. AND THEN IF YOU LOOK OVER HERE, AT LEAST ACCORDING  
03:43:44 5 TO ARISTA'S SUMMARY ON THE RIGHT IT SAYS IT'S NOT CONSISTENT  
03:43:50 6 WITH IOS?

03:43:50 7 A. I SEE THIS DOCUMENT, IT SAYS THAT.

03:43:52 8 Q. SO AT LEAST THE HP 6600 SWITCH DIDN'T HAVE AN IOS-LIKE  
03:43:57 9 CLI; RIGHT?

03:43:57 10 A. I SEE THIS DOCUMENT SAYS THAT.

03:43:59 11 Q. RIGHT. AND YOU DIDN'T DO ANY INDEPENDENT ANALYSIS OF WHAT  
03:44:03 12 OTHER VENDORS'S CLI'S WERE; RIGHT, IN THIS 2010 TIMEFRAME?

03:44:08 13 A. NO.

03:44:08 14 Q. RIGHT. SO YOU DON'T HAVE ANY BASIS TO DISPUTE WHAT'S  
03:44:13 15 CONTAINED IN THE RESULT OF THE SUMMARIES; RIGHT?

03:44:14 16 A. I WOULDN'T KNOW ONE WAY OR THE OTHER HERE.

03:44:18 17 Q. OKAY. SO NOW IF WE GO TO THE NEXT PAGE OF THAT DOCUMENT  
03:44:21 18 WHICH I BELIEVE IS PAGE 10, FOR THE RECORD I'M IN 6095,  
03:44:26 19 EXHIBIT 6095?

03:44:27 20 THE COURT: THANK YOU.

03:44:28 21 MR. NELSON: YOU WILL SEE ONCE AGAIN, AT THE SECOND  
03:44:31 22 LINE FOR THE ARISTA 7100, IT SAYS IOS-LIKE CLI.

03:44:37 23 DO YOU SEE THAT?

03:44:38 24 A. YES.

03:44:38 25 Q. WHICH IS CONSISTENT WITH THE EARLIER DESCRIPTION WE SAW OF

03:44:41 1 THE ARISTA 7100?

03:44:43 2 A. I SEE IT SAYS THAT.

03:44:44 3 Q. NOW FOR THE EXTREME X650, WHICH YOU UNDERSTAND TO BE AN  
03:44:51 4 EXTREME SWITCH; IS THAT RIGHT?

03:44:52 5 A. YES.

03:44:52 6 Q. AND EXTREME IS A COMPANY THAT WAS A COMPETITOR OF ARISTA  
03:44:56 7 BACK IN THIS 2010 TIMEFRAME?

03:44:58 8 A. YES, I BELIEVE SO.

03:44:59 9 Q. AND THE DOCUMENT 6095 SAYS, ONCE AGAIN NOT CONSISTENT WITH  
03:45:03 10 IOS; RIGHT?

03:45:04 11 A. IT SAYS THAT, YES.

03:45:05 12 Q. SO ACCORDING TO THIS DOCUMENT THE EXTREME X650 DIDN'T HAVE  
03:45:09 13 AN IOS-LIKE CLI, CORRECT?

03:45:11 14 A. THIS IS NOT CONSISTENT WITH IOS. I AGREE.

03:45:13 15 Q. OKAY. SO NOW IF I GO TO PAGE 12 OF THE DOCUMENT, EXHIBIT  
03:45:25 16 6095, YOU WILL SEE THERE'S A REFERENCE HERE -- OR EXCUSE ME, A  
03:45:29 17 COMPARISON HERE TO A DELL POWERCONNECT SWITCH; DO YOU SEE THAT?

03:45:33 18 A. I DO SEE THAT.

03:45:34 19 Q. AND DELL WAS ANOTHER COMPANY AT LEAST BACK IN THIS 2010  
03:45:37 20 TIMEFRAME THAT WAS A COMPETITOR OF ARISTA'S MADE NETWORK  
03:45:43 21 SWITCHES; RIGHT?

03:45:44 22 A. THEY MADE NETWORK SWITCHES, YES.

03:45:46 23 Q. AND SO HERE AGAIN GOING TO THE SECOND LINE FOR THE ARISTA  
03:45:49 24 7100, ONCE AGAIN WE SEE "IOS-LIKE CLI;" DO YOU SEE THAT?

03:45:52 25 A. YES.

03:45:53 1 Q. AND THEN FOR THE DELL SWITCH, AT LEAST FOR THE  
03:45:57 2 POWERCONNECT 8024 IT SAYS, NOT CONSISTENT WITH IOS; RIGHT?

03:46:01 3 A. YES.

03:46:02 4 Q. SO JUST A FEW MORE QUESTIONS FOR YOU, SIR.

03:46:06 5 SO YOU CAN PUT 6095 ASIDE. SO YOU ARE NOT AWARE OF ANY  
03:46:21 6 ANALYSIS AT ARISTA OF OTHER EQUIPMENT VENDORS AND HOW OFTEN  
03:46:25 7 THEY USE ANY PARTICULAR CLI COMMAND; ISN'T THAT RIGHT?

03:46:28 8 A. NO, I'M NOT AWARE.

03:46:30 9 Q. AND YOU WERE THE FIFTH EMPLOYEE, I THINK YOU SAID AT  
03:46:33 10 ARISTA; IS THAT RIGHT?

03:46:35 11 A. SOMETHING LIKE THAT.

03:46:36 12 Q. OKAY. SO I WANT TO TALK TO YOU A BIT ABOUT THE STANDARDS.  
03:46:43 13 YOU TALKED ABOUT THE ITEF; DO YOU RECALL THAT?

03:46:47 14 A. CORRECT.

03:46:47 15 Q. AND YOU HAD, YOU SHOWED US AN EXAMPLE OF AN RFC THAT YOU  
03:46:51 16 SUBMITTED; RIGHT?

03:46:52 17 A. YES.

03:46:53 18 Q. AND THE ITEF, THAT GENERALLY CONCERNS LIKE PROTOCOLS AND  
03:46:57 19 THINGS LIKE THAT; RIGHT?

03:47:02 20 A. AMONG OTHER THINGS, YES.

03:47:03 21 Q. IN OTHER WORDS HOW THE DATA MIGHT BE FORMATTED TO PASS IT  
03:47:06 22 BACK AND FORTH BETWEEN EQUIPMENT, THINGS LIKE THAT?

03:47:09 23 A. THINGS LIKE THAT.

03:47:10 24 Q. BUT YOU'RE NOT AWARE OF ANY STANDARDS SETTING ORGANIZATION  
03:47:14 25 THAT HAS STANDARDIZED WHAT A COMMAND-LINE INTERFACE WOULD BE;

09:23:12

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) DECEMBER 6, 2016  
)  
ARISTA NETWORKS, INC., ) VOLUME 9  
)  
DEFENDANT ) PAGES 1879-2157  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: DAVID A. NELSON  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

09:50:59 1 YOUR HONOR.

09:50:59 2 THE COURT: OKAY. THEN THOSE ARE IN.

09:51:01 3 MR. NELSON: THAT'S NOT WHAT I'M TALKING ABOUT.

09:51:03 4 THE COURT: OKAY.

09:51:03 5 MR. NELSON: I'M TALKING ABOUT ALL OF THE OTHER  
09:51:05 6 THINGS THAT ARE OFFERED HERE.

09:51:06 7 THE COURT: SO WHAT REASONABLE OBJECTION DO YOU HAVE  
09:51:08 8 TO THE AUTHENTICITY OF THE MANUALS?

09:51:12 9 MR. NELSON: THE REASONABLE OBJECTION I HAVE IS  
09:51:13 10 REMEMBER, THEIR WHOLE CASES, WE GOT TWO DIFFERENT INDUSTRY  
09:51:17 11 STANDARDS, AND I WILL PICK UP THE LATER ONE, THE ONE THAT'S  
09:51:20 12 RELATED TO FAIR USE, NOT THEIR ORIGINALITY DEFENSE. SO THAT  
09:51:23 13 ENTIRE THING IS BASED ON WHAT PEOPLE ARE ACTUALLY DOING.

09:51:27 14 WHAT APPEARS IN THE MANUALS IS NOT NECESSARILY WHAT PEOPLE  
09:51:33 15 ARE DOING. THEY'VE MADE THAT CLEAR THROUGHOUT THE CASE.

09:51:35 16 AND IN FACT, THINK ABOUT THIS YOUR HONOR, WHAT IS WE HEARD  
09:51:38 17 AND SAW YESTERDAY --

09:51:39 18 THE COURT: WHAT IS IN THEIR MANUAL IS NOT  
09:51:42 19 NECESSARILY WHAT THEY ARE DOING?

09:51:43 20 MR. NELSON: MEANING IT'S NOT NECESSARILY WHAT'S  
09:51:45 21 IMPLEMENTED IN THE PRODUCT. AND IT'S CERTAINLY NOT THE  
09:51:48 22 TOTALITY OF WHAT'S IMPLEMENTED TO THE PRODUCT. SO WE DON'T  
09:51:51 23 HAVE ANY TESTIMONY TO THAT EFFECT.

09:51:52 24 THE OTHER THING IS WE DON'T KNOW WHICH PRODUCTS THEY ARE  
09:51:55 25 TALKING ABOUT OR WHETHER -- THE REPRESENTATION BEING MADE BY

09:51:58 1 DR. BLACK, IS THIS APPLIES TO ALL THE PRODUCTS THAT -- SO HE  
09:52:02 2 WANTS TO SAY OH, I GOT A FEW DELL MANUALS FOR ONE OF THE  
09:52:05 3 PRODUCTS AND THEREFORE DELL IS FOLLOWING WHAT THEY TERM TO BE  
09:52:09 4 THE INDUSTRY STANDARD, WHATEVER THAT MIGHT BE.

09:52:10 5 THE COURT: WELL, THAT'S JUST A MATTER OF -- THAT'S  
09:52:14 6 CROSS-EXAMINATION OF DR. BLACK'S TESTIMONY.

09:52:17 7 MR. NELSON: UNDERSTOOD, YOUR HONOR. I UNDERSTAND  
09:52:20 8 THAT, ALTHOUGH THINK ABOUT WHAT WE ARE DOING HERE.

09:52:23 9 SO WE HAVE THEIR OWN STATEMENTS FOR THE FOUR -- THERE'S  
09:52:30 10 BASICALLY, IN TERMS OF THE SUMMARY EXHIBIT, HE WANTS TO OFFER  
09:52:32 11 TO THE JURY, AND I FORGET THE NUMBER, I WILL GET THAT FOR  
09:52:35 12 YOUR HONOR, I THINK IT'S 9041, BUT REGARDLESS, SO HE HAS A LIST  
09:52:40 13 OF COMMANDS, OVERLAPPING COMMANDS, AND PICKS BROCADE AND FOUR  
09:52:46 14 OF THE JUNIPER OS-E, AND WE ALREADY HEARD THE CONFUSION WITH  
09:52:50 15 JUNIPER OS, VERSUS OS-E, AND DELL AND EXTREME; RIGHT.

09:52:58 16 AND WE KNOW FROM THEIR OWN DOCUMENTATION THAT THEY  
09:53:01 17 BELIEVE, MEANING ARISTA, BELIEVES AS OF 2010, THAT THOSE PEOPLE  
09:53:07 18 DO NOT IMPLEMENT WHAT THEY CALL THE INDUSTRY STANDARD CLI.

09:53:11 19 SO DR. BLACK IS SIMPLY BRUSHING EVERYTHING ASIDE, RELYING  
09:53:14 20 ON A FEW UNAUTHENTICATED MANUALS.

09:53:18 21 IN TERMS OF THE ONES PRODUCED TO SUBPOENA, I DON'T HAVE  
09:53:21 22 ANY PROBLEM SEPARATING THOSE THINGS OUT. BUT INCLUDING IN THE  
09:53:24 23 SUMMARY EXHIBIT THE ONES THAT THEY SIMPLY GOT OFF THE WEB AT  
09:53:30 24 HIS DEPOSITION TESTIMONY WAS THAT THE LAWYERS HANDED THESE TO  
09:53:32 25 HIM, RIGHT. THAT WOULD BE LIKE ME GOING TO WIKIPEDIA AND

09:53:35 1 SAYING HEY, THIS IS AN ESTABLISHED FACT. AND WE ALL KNOW  
09:53:39 2 WIKIPEDIA IS NOT SO RELIABLE, RIGHT?

09:53:42 3 THE COURT: WELL, BUT YOU'RE SUGGESTING THAT THERE'S  
09:53:46 4 DOUBT THAT A PRODUCT MANUAL THAT IS POSTED ONLINE IS  
09:53:51 5 INAUTHENTIC, THAT IT'S FAKE.

09:53:53 6 MR. NELSON: WELL, THERE'S NO TESTIMONY THAT WHAT  
09:53:56 7 WEBSITES -- DR. BLACK DOESN'T EVEN KNOW WHAT WEBSITES THEY CAME  
09:54:00 8 FROM.

09:54:00 9 THE COURT: WELL, I APPRECIATE THAT.

09:54:01 10 MR. NELSON: THEY COULD COME FROM ANYTHING. AND WHO  
09:54:03 11 KNOWS WHO POSTED THESE THINGS, WHETHER THEY COME FROM  
09:54:09 12 PARTICULAR PRODUCTS THAT WERE ACTUALLY OUT THERE IN THE  
09:54:11 13 MARKETPLACE, WHAT THOSE PRODUCTS IMPLEMENTED.

09:54:11 14 THE COURT: THE MANUALS DON'T TELL YOU THAT?

09:54:14 15 MR. NELSON: NO, NO, NO --

09:54:15 16 THE COURT: I MEAN --

09:54:16 17 MR. WONG: HE SAID A LOT. CAN I SAY SOMETHING?

09:54:19 18 THE COURT: IT'S HARD TO IMAGINE, HERE'S A MANUAL AND  
09:54:21 19 I'M NOT GOING TO TELL YOU WHAT PRODUCTS IT WORKS ON.

09:54:24 20 MR. NELSON: I'M NOT SAYING WHAT PRODUCTS, I'M SAYING  
09:54:26 21 DR. BLACK DOESN'T PROVIDE THAT INFORMATION. DR. BLACK DOESN'T  
09:54:29 22 EVER MAKE THAT CORRELATION. HE SIMPLY SAYS, THIS IS RELEVANT  
09:54:33 23 TO DELL. DELL IS INDUSTRY STANDARD, RIGHT?

09:54:35 24 MR. WONG: I DISAGREE.

09:54:36 25 MR. NELSON: WELL, PLEASE, LET ME FINISH.



10:27:25 1 Q. AND WHEN DID YOU JOIN ARISTA?

10:27:27 2 A. I JOINED IN MID-SEPTEMBER.

10:27:28 3 Q. AND WERE YOU THE CEO, THE CHIEF EXECUTIVE OFFICER THEN?

10:27:31 4 A. YES, AND KEN DUDA WAS THE ACTING PRESIDENT. I BELIEVE I  
10:27:34 5 WAS THE FIRST PRESIDENT AND CEO APPOINTED FOR THE COMPANY.

10:27:38 6 Q. AND CAN YOU GIVE THE JURY JUST A GENERAL SENSE OF WHAT  
10:27:41 7 RESPONSIBILITIES YOU HAVE AND YOU HAVE HAD AS THE CEO OF  
10:27:44 8 ARISTA?

10:27:45 9 A. YOU KNOW, BEING A CEO IS LIKE BEING A PARENT. YOU HAVE  
10:27:50 10 RESPONSIBILITIES FOR EVERYTHING, BUT YOU DON'T KNOW ENOUGH  
10:27:55 11 ABOUT EVERYTHING.

10:27:56 12 SO I REALLY BELIEVE IN HAVING A TEAM OF EXPERTS, SOME OF  
10:27:59 13 WHOM YOU MIGHT HAVE MET, AND THE BEST AND THE BRIGHTEST IN ALL  
10:28:03 14 MY CAREER AND ENGINEERING. I NEVER MET BRIGHTER AND LOWER SET  
10:28:07 15 OF EGO OF ENGINEERING TEAM THAN I DID AT ARISTA.

10:28:10 16 AND SO I CONSIDER MYSELF A KEEPER OF THE VALUES THERE, THE  
10:28:16 17 BEST OF BREED TECHNOLOGY, THE CUSTOMER INTIMACY, DELIVERING  
10:28:21 18 HIGH QUALITY PRODUCTS, AND OF COURSE CLOUD NETWORKING WHICH I  
10:28:24 19 REALLY BELIEVE WAS A VISION OF THE COMPANY.

10:28:25 20 Q. OKAY. LET'S GET INTO THAT A LITTLE BIT.

10:28:28 21 SO AT THE TIME YOU JOINED IN 2008, WHAT WAS ARISTA'S  
10:28:34 22 MISSION?

10:28:34 23 A. THE MISSION, AND I'VE WRITTEN SEVERAL, PROBABLY 75 BLOGS  
10:28:39 24 ON THIS TOPIC. THE MISSION WAS CLOUD NETWORKING. AND WE  
10:28:42 25 WANTED, THE NETWORKING MARKET WAS VERY STAGNANT, IT HAD BEEN

10:28:47 1 DOMINATED BY ONE PLAYER. AND IT WAS A CLASSIC THREE-TIER  
10:28:52 2 NETWORK, VERY MONOLITHIC SOFTWARE, AND THERE HADN'T BEEN MUCH  
10:28:57 3 CHANGE.

10:28:58 4 SO WHAT ARISTA WAS SEEING IS THAT THERE WAS A NEW PARADIGM  
10:29:04 5 OF SILICON, A NEW PARADIGM OF SOFTWARE. AND IN FACT, A NEW  
10:29:08 6 CLASS IN PARADIGM OF CUSTOMERS THAT WANTED A CHANGE.

10:29:12 7 Q. WHAT MARKET WERE YOU FOCUSING ON?

10:29:15 8 A. SO OUR GOAL WAS TO FOCUS ON THE CLOUD NETWORKING MARKET.

10:29:19 9 THIS WAS A NEW CLASS OF CLOUD PROVIDERS THAT WERE BUILDING  
10:29:22 10 A NEW SCALE. YOU CAN THINK OF IT AS BASICALLY RATHER THAN  
10:29:25 11 PUTTING NETWORKING IN THE DATA CENTER OR IN THE PREMISE, THEY  
10:29:27 12 WERE TAKING IT INTO THE CLOUD, OFF THE PREMISE, SO THAT YOU CAN  
10:29:33 13 CONSUME NETWORKING WITHOUT EACH COMPANY OR CUSTOMER HAVING TO  
10:29:37 14 BUILD IT THEMSELVES.

10:29:37 15 Q. WHAT WAS THE STATE -- WE'VE HEARD TESTIMONY FROM A NUMBER  
10:29:40 16 OF WITNESSES ABOUT THE CLOUD MARKET, BUT LET'S GO BACK TO 2008.  
10:29:44 17 WAS THERE A RECOGNIZED CLOUD MARKET THEN?

10:29:46 18 A. NO, NOT AT ALL, IT WAS NEARLY A STATED VISION AND  
10:29:49 19 DIRECTION ON MY PART AND MY COMPANY'S PART. BUT WE HAD A  
10:29:55 20 BELIEF THAT THIS WAS A REALLY SIGNIFICANT MARKET. YOU HAD TO  
10:29:59 21 LOOK REALLY AROUND THE BEND TO SEE IT, BECAUSE IT WASN'T THERE  
10:30:01 22 AND IT WASN'T THERE FOR A LONG TIME. I THINK THE ACTUAL MARKET  
10:30:04 23 FOR SOFTWARE-DRIVEN CLOUD MARKETING REALLY STARTED HAPPENING IN  
10:30:10 24 2011, 2012.

10:30:11 25 Q. AND BACK THEN IN '08, '09, WHAT DID YOU SEE AS THE KEY

11:27:43 1 ARISTA ENGINEERS WERE COPYING CLI COMMANDS FROM CISCO?

11:27:46 2 A. NO.

11:27:46 3 Q. YOU NEVER TOLD CISCO OR CUSTOMERS THAT?

11:27:52 4 A. THOSE EXACT WORDS? HAVE I TOLD A CUSTOMER THAT ARISTA

11:27:58 5 ENGINEERS EXACTLY COPIED THE CISCO CLI, ARE YOU ASKING ME THAT?

11:28:02 6 TO THE BEST OF MY KNOWLEDGE, I DIDN'T USE THOSE EXACT WORDS.

11:28:05 7 I HAVE TOLD CUSTOMERS THAT WE INTEROPERATE WITH CISCO AND

11:28:09 8 WE HAVE THE SAME CISCO-LIKE CLI.

11:28:11 9 Q. ARE YOU DENYING THAT CUSTOMERS WERE TOLD BY ARISTA

11:28:16 10 ENGINEERS THAT CISCO'S CLI COMMANDS WERE COPIED INTO ARISTA

11:28:20 11 PRODUCTS? ARE YOU DENYING THAT?

11:28:24 12 A. THAT'S A SEPARATE QUESTION. YOU ARE ASKING ME IF I TOLD

11:28:27 13 ENGINEERS THAT ARISTA ENGINEERS DID THE WORK. NOW YOU ARE

11:28:30 14 ASKING ME A SLIGHTLY DIFFERENT QUESTION.

11:28:32 15 COULD YOU REPEAT THE QUESTION?

11:28:33 16 Q. YES.

11:28:35 17 ARE YOU DENYING THAT ARISTA PEOPLE TOLD CUSTOMERS THAT

11:28:40 18 ARISTA HAD COPIED CLI COMMANDS INTO ARISTA PRODUCTS?

11:28:45 19 A. YOU ARE ASKING WHAT ARISTA PEOPLE TOLD NOT WHAT I TOLD.

11:28:49 20 Q. CORRECT.

11:28:49 21 A. NO, I'M NOT DENYING THAT.

11:28:51 22 Q. YOU TALKED ABOUT AN EMPLOYEE THAT WAS TAKEN CARE OF,

11:29:01 23 MR. SOLLENDER; RIGHT?

11:29:04 24 A. I DIDN'T MENTION THE NAME IN THE TESTIMONY, BUT YES.

11:29:08 25 Q. SO WHEN YOU SAY TAKEN CARE OF, YOU FIRED THAT INDIVIDUAL,

02:20:18 1 MOVE 5457 IN EVIDENCE. THAT'S ONE OF THE DOCUMENTS WE  
02:20:23 2 DISCUSSED.

02:20:26 3 THE COURT: ANY OBJECTION, MR. NELSON?

02:20:27 4 MR. NELSON: NO OBJECTION.

02:20:28 5 THE COURT: IT WILL BE ADMITTED.

02:20:30 6 (DEFENDANT'S EXHIBIT 5457 WAS ADMITTED INTO EVIDENCE.)

02:20:30 7 MR. VAN NEST: THANK YOU.

02:20:56 8 **CROSS-EXAMINATION**

02:20:57 9 BY MR. NELSON:

02:20:57 10 Q. ALL RIGHT. GOOD AFTERNOON, SIR.

02:20:59 11 A. GOOD AFTERNOON.

02:21:00 12 Q. I JUST HAVE A FEW QUESTIONS FOR YOU, JUST TO FOLLOW UP ON  
02:21:03 13 SOME THINGS THAT COUNSEL ASKED.

02:21:04 14 SO YOU DON'T RECALL ANY STATEMENT OR COMMUNICATION THAT  
02:21:08 15 YOU MADE TO ANY COMPETITOR SAYING IT WAS OKAY FOR THEM TO USE  
02:21:12 16 CISCO CLI; RIGHT.

02:21:13 17 A. NO, I DO NOT RECALL.

02:21:15 18 Q. AND SIMILARLY, YOU DON'T RECALL ANY STATEMENT THAT ANYBODY  
02:21:18 19 ELSE AT CISCO MADE TO A COMPETITOR SAYING IT WAS OKAY TO USE  
02:21:22 20 THE CISCO CLI; RIGHT?

02:21:23 21 A. THAT'S CORRECT.

02:21:24 22 Q. AND YOU DON'T RECALL ANY PUBLIC STATEMENT THAT CISCO EVER  
02:21:29 23 MADE SAYING IT WAS OKAY TO IT USE THE CISCO CLI; RIGHT?

02:21:32 24 A. I DO NOT RECALL SUCH A STATEMENT.

02:21:39 25 Q. NOW I WANT TO TALK ABOUT THE COMPETITORS YOU MENTIONED. I

02:35:59 1 A. NO, WE DID NOT.

02:36:01 2 Q. AND ONE MORE PIECE OF THE CLI INTERFACE.

02:36:03 3 ARE YOU FAMILIAR WITH HELP STRINGS?

02:36:05 4 A. YES.

02:36:06 5 Q. AND DOES JUNIPER JUNOS ALSO HAVE HELP STRINGS AS A

02:36:09 6 FEATURE?

02:36:10 7 A. YES, WE DO.

02:36:11 8 Q. AND WHO CREATES THE ACTUAL CONTENT THAT GOES INTO THE HELP

02:36:17 9 STRINGS WITHIN JUNIPER?

02:36:18 10 A. AGAIN, IT'S THE INDIVIDUAL DEVELOPER, GUIDED BY THE JUNOS

02:36:25 11 STYLE.

02:36:26 12 Q. NOW I WANT TO GO BACK IN TIME TO 1997, 1998 WHEN YOU FIRST

02:36:30 13 STARTED WORKING ON THE JUNOS CLI. WHEN YOU WERE WORKING ON

02:36:34 14 CREATING THE FIRST CLI FOR JUNIPER, WERE YOU AWARE THAT CISCO

02:36:38 15 ALREADY HAD PRODUCTS ON THE MARKET WITH THE CISCO CLI?

02:36:42 16 A. YES, WE WERE.

02:36:43 17 Q. AND HOW DID YOU KNOW THAT? HOW DID YOU KNOW ABOUT THE

02:36:46 18 CISCO CLI PRODUCTS?

02:36:47 19 A. WE WERE AWARE THAT AS OUR PRODUCTS SHIPPED, THEY WOULD BE

02:36:51 20 OUR BIGGEST COMPETITOR.

02:36:54 21 Q. AND WHEN YOU WERE CREATING THE JUNIPER CLI FOR JUNOS, DID

02:37:00 22 YOU LOOK AT THE COMMANDS AND THE SUBCOMMAND STRUCTURE AND

02:37:05 23 SYNTAX THAT WAS BEING USED BY CISCO FOR THE CISCO CLI USED IN

02:37:09 24 COMPETING PRODUCTS?

02:37:10 25 A. NO, I INTENTIONALLY DID NOT LOOK AT COMPETING PRODUCTS.

02:37:13 1 Q. SO CAN YOU SAY THAT ONE MORE TIME, SLOWLY, FOR THE JURY?

02:37:16 2 A. NO, I DID NOT LOOK AT COMPETING PRODUCTS.

02:37:19 3 Q. AND YOU DID NOT DO THAT INTENTIONALLY?

02:37:21 4 A. INTENTIONALLY, YES.

02:37:23 5 Q. AND WHY DID YOU DECIDE, AS THE CREATOR OF THE JUNIPER CLI,  
02:37:27 6 TO CHOOSE NOT TO INTENTIONALLY LOOK AT A COMPETING CLI FROM  
02:37:32 7 CISCO?

02:37:32 8 A. THERE WERE THREE MAIN REASONS.

02:37:36 9 THE FIRST WAS WE DIDN'T WANT TO GIVE CISCO ANY GROUNDS TO  
02:37:39 10 SUE US.

02:37:40 11 THE SECOND WAS THE -- BASED ON FEEDBACK FROM THE  
02:37:51 12 CUSTOMERS, WE WANTED TO DO SOMETHING BETTER.

02:37:52 13 AND THE THIRD WAS, YOU KNOW, AS A NEW COMPANY HAVING THIS  
02:37:56 14 INCREDIBLE GREEN FIELD EXPERIENCE OPPORTUNITY, I WANTED TO  
02:37:59 15 WRITE SOMETHING COMPLETELY NEW, SOMETHING THAT I WANTED TO MAKE  
02:38:02 16 AND USE. I DIDN'T WANT TO COPY SOMETHING.

02:38:05 17 Q. OKAY. SO I WANT TO GO THROUGH EACH OF THOSE REASONS THAT  
02:38:09 18 YOU JUST STATED ON THE RECORD.

02:38:10 19 SO FIRST OF ALL, WHEN YOU SAID GREEN FIELD PRODUCT OR THIS  
02:38:13 20 WAS A BRAND-NEW OPPORTUNITY FOR YOU, WHAT DID YOU MEAN BY THAT?  
02:38:17 21 AND CAN YOU EXPLAIN WHY THAT WAS AN INFLUENCE ON YOU IN  
02:38:20 22 DECIDING TO CREATE THE JUNOS CLI?

02:38:22 23 A. SO THE TERM "GREEN FIELD" COMES FROM AN OPEN PASTURE. YOU  
02:38:26 24 CAN GO IN ANY DIRECTION, EVERYTHING IS WILD. YOU CAN MAKE IT  
02:38:30 25 WHAT YOU WANT. THERE ARE NO CONSTRAINTS ON WHAT YOU ARE DOING.

02:38:34 1 I KIND OF HAD THAT OPPORTUNITY IN WHAT I COULD DO,  
02:38:44 2 LITERALLY NOBODY COULD SAY THAT, DON'T DO THAT, I COULD DO  
02:38:45 3 WHATEVER I WANTED.

02:38:46 4 Q. THAT WAS BECAUSE YOU WERE AT JUNIPER AND THEY WERE WORKING  
02:38:49 5 ON THEIR FIRST CLI?

02:38:50 6 A. IT WAS A SMALL COMPANY AND WE HAD TECHNICAL REVIEW AND  
02:38:53 7 STUFF LIKE THAT, BUT IT WAS REALLY AN OPPORTUNITY TO REIMAGINE  
02:38:57 8 THE INTERACTION BETWEEN USERS AND DEVICES.

02:39:00 9 Q. AND WAS THAT AN EXCITING OPPORTUNITY FOR YOU?

02:39:02 10 A. YES, IT WAS.

02:39:02 11 Q. AND THE SECOND REASON, I THINK YOU MENTIONED WAS SOMETHING  
02:39:06 12 ABOUT CUSTOMERS, CUSTOMER FEEDBACK.

02:39:09 13 AND CAN YOU EXPLAIN A LITTLE BIT FURTHER ABOUT SOME OF THE  
02:39:13 14 CUSTOMER FEEDBACK THAT YOU HAD BEEN HEARING ABOUT CISCO CLI AND  
02:39:16 15 HOW THAT INFLUENCED YOUR DECISION TO COME UP WITH A DIFFERENT  
02:39:19 16 USER INTERFACE FOR JUNIPER?

02:39:21 17 A. SURE.

02:39:23 18 IF YOU -- SO IOS, EVEN AT THAT POINT IN '97, WAS FAIRLY  
02:39:29 19 OLD. AND THE WAY IT APPROACHED CONFIGURATION OF THE COMMANDS  
02:39:33 20 AND THE USER INTERACTION WAS FAIRLY DATED.

02:39:38 21 WE WANTED TO DO SOMETHING MORE MODERN, SOMETHING MORE  
02:39:43 22 HIERARCHICAL, SOMETHING THAT WOULD HELP USERS IN THE DAY-TO-DAY  
02:39:49 23 OPERATIONS THAT THEY USED OUR DEVICES FOR.

02:39:51 24 Q. NOW THE OTHER THIRD REASON THAT YOU MENTIONED IS IN  
02:39:55 25 LOOKING AT CISCO'S IOS CLI, YOU WERE CONCERNED THAT YOU DIDN'T

02:40:00 1 WANT TO GET SUED BY CISCO.

02:40:01 2 CAN YOU EXPLAIN FURTHER, FOR THE JURORS, WHAT THAT CONCERN  
02:40:04 3 WAS ABOUT?

02:40:04 4 A. SO BEFORE COMING TO JUNIPER I WAS EMPLOYED AS A CONTRACTOR  
02:40:09 5 FOR IBM, AND IBM HAS A VERY, A VERY STRINGENT POLICY OF NOT  
02:40:15 6 ALLOWING DEVELOPERS TO LOOK AT COMPETITORS'S PRODUCTS.

02:40:19 7 WE WOULD GET REPORTS AND CRITIQUES ON WHAT WAS AVAILABLE  
02:40:24 8 IN THE MARKETPLACE, BUT WE DIDN'T ACTUALLY LOOK AT PRODUCTS.  
02:40:27 9 IT WAS KIND OF A WALL TO KEEP US FROM ANY SUSPICION OR ANY  
02:40:31 10 TAIN OF DERIVATIVE -- OF BEING CALLED A DERIVATIVE PRODUCT.

02:40:43 11 Q. SO BY NOT LOOKING AT CISCO'S CLI AND USING CISCO'S CLI  
02:40:48 12 COMMANDS, WERE YOU TRYING TO AVOID INFRINGING ANY OF CISCO'S  
02:40:52 13 INTELLECTUAL PROPERTY RIGHTS?

02:40:53 14 A. I WAS TRYING TO STAY CLEAR OF ANY ALLEGATION OF SUCH  
02:41:02 15 BEHAVIOR.

02:41:03 16 Q. OKAY. AND ARE YOU PROUD OF THE WORK THAT YOU'VE DONE WITH  
02:41:06 17 YOUR JUNOS CLI?

02:41:07 18 A. ABSOLUTELY.

02:41:08 19 Q. AND HOW MANY, I KNOW IT'S HARD TO ESTIMATE, BUT HOW MANY  
02:41:12 20 PRODUCTS WITHIN JUNIPER OVER THIS LONG PERIOD OF TIME HAVE RUN  
02:41:17 21 SOME VERSION OF YOUR JUNIPER JUNOS CLI?

02:41:22 22 A. I COULDN'T PUT A NUMBER ON IT, NORTH OF 18 OR 20.

02:41:29 23 Q. OKAY. AND HAS JUNIPER BEEN ABLE TO EFFECTIVELY COMPETE  
02:41:35 24 AGAINST CISCO IN VARIOUS MARKETS DURING YOUR TENURE THERE USING  
02:41:41 25 A CLI THAT IS DIFFERENT FROM CISCO'S CLI?



02:41:43 1

A. YES.

02:41:44 2

Q. AND IN FACT, IN THE ROUTER MARKET, HOW WOULD YOU

02:41:48 3

CHARACTERIZE JUNIPER'S MARKET SHARE AS COMPARED TO CISCO'S?

02:41:51 4

A. I BELIEVE WE ARE NUMBER TWO.

02:41:53 5

Q. SO YOU WERE ABLE TO GAIN A NUMBER TWO MARKET SHARE IN THE

02:42:06 6

COMPETITIVE ROUTER MARKET COMPETING AGAINST CISCO BY USING A

02:42:10 7

USER INTERFACE THAT IS DIFFERENT THAN CISCO'S, IS THAT TRUE?

02:42:13 8

A. YES, THAT IS TRUE.

02:42:15 9

Q. AND I WOULD LIKE TO HAVE YOU TAKE A LOOK IN YOUR BINDER, I

02:42:21 10

BELIEVE THERE SHOULD BE A TRIAL EXHIBIT 4821.

02:42:31 11

I BELIEVE THIS HAS ALREADY BEEN ADMITTED INTO EVIDENCE?

02:42:34 12

MR. VAN NEST: IT HAS.

02:42:35 13

MR. PAK: SO I WOULD LIKE TO SHOW THAT ON THE SCREEN,

02:42:37 14

MR. FISHER.

02:42:39 15

Q. MR. SHAHER, THESE ARE SOME OF THE COMMANDS THAT ARE AT

02:42:42 16

ISSUE IN THIS CASE THAT ARE CISCO COMMANDS.

02:42:44 17

CAN YOU -- I KNOW YOU HAVEN'T STUDIED THIS IN DETAIL, BUT

02:42:48 18

COULD YOU JUST FLIP THROUGH THIS COMMAND LIST AND LET THE JURY

02:42:51 19

KNOW WHETHER THIS LOOKS LIKE A LIST OF JUNIPER COMMANDS OR NOT.

02:42:59 20

DO THEY LOOK FAMILIAR YOU TO YOU AS JUNIPER COMMANDS?

02:43:02 21

A. THESE ARE CERTAINLY NOT JUNIPER COMMANDS.

02:43:04 22

Q. AND WHY DO YOU SAY THAT?

02:43:06 23

A. THE STYLE BETWEEN IOS AND JUNOS IS VERY DIFFERENT IN TWO

02:43:12 24

PARTS.

02:43:12 25

ONE IS IOS REGARDS CONFIGURATION AS JUST A SERIES OF

02:43:18 1 COMMANDS. WHEREAS IN JUNOS, DATA IS MORE LIKE A DATABASE. YOU  
02:43:23 2 EDIT IT, CHANGE IT, YOU COPY IT, YOU HAVE OPERATIONS YOU CAN  
02:43:30 3 PERFORM ON DATA AS CONFIGURATION DATA. THEN THERE'S A SEPARATE  
02:43:33 4 SET OF OPERATIONAL COMMANDS.

02:43:36 5 CISCO IOS MIXES THOSE TWO --

02:43:41 6 Q. AND --

02:43:42 7 A. -- IN WAYS THAT WE DO NOT.

02:43:43 8 Q. YOU ALSO MENTIONED EARLIER THAT YOU BELIEVED THE JUNIPER  
02:43:47 9 CLI IS MORE HIERARCHICAL THAN CISCO CLI.

02:43:50 10 COULD YOU EXPLAIN TO THE JURY WHAT YOU MEAN BY THAT?

02:43:52 11 A. SO AN IOS COMMAND -- LET ME TRY IT THE OTHER WAY.

02:44:05 12 JUNOS COMMAND HAS A SERIES OF LAYERS AND YOU CAN EDIT INTO  
02:44:10 13 THOSE LAYERS, LOOK AT THE PARTICULAR DATA UNDER A LAYER AND  
02:44:13 14 SHOW IT.

02:44:13 15 IT'S SIMILAR TO FOLDERS AND DIRECTORIES ON A WINDOWS OR A  
02:44:17 16 MAC. WHERE, IN IOS, EVERYTHING IS AT THE TOP LEVEL. JUNOS,  
02:44:23 17 THERE IS THIS ORGANIZATION THAT ALLOWS YOU TO LOOK AT THE  
02:44:26 18 CONFIGURATION FOR ANY PARTICULAR PROTOCOL SEPARATE FROM THE  
02:44:29 19 REST OF THE BOX.

02:44:32 20 Q. EVEN THOUGH YOU WERE USING SOME INDUSTRY COMMON WORDS AND  
02:44:35 21 ACRONYMS, DID YOU FEEL COMPELLED TO USE CISCO'S SYNTAX AND  
02:44:39 22 CISCO'S HIERARCHY WHEN COMING UP WITH JUNIPER'S CLI?

02:44:43 23 A. WE ATTEMPTED TO USE THE COMMANDS AND TERMS THAT WERE MOST  
02:44:49 24 APPROPRIATE FOR THE TASK AT HAND.

02:44:52 25 AT THE BOTTOM OF THE FIRST PAGE -- SO THERE IS SOME AMOUNT

02:59:32 1 COMMANDS, THEY ARE UNDER IP, OR IPV6. AND THAT'S -- THAT, TO  
02:59:39 2 ME, I THINK SPEAKS OF THE CREDIT -- THE ORIGINS OF IOS.  
02:59:49 3 WHEREAS WE, COMING IN LATER IN THE GAME, WE WERE ABLE TO DO A  
02:59:53 4 CLEANER DESIGN.  
02:59:54 5 Q. CAN YOU EXPLAIN THAT A LITTLE BIT FURTHER. YOU TALKED  
02:59:56 6 ABOUT IPV6; IS THAT RIGHT?  
02:59:58 7 A. WELL, JUST LIKE THE -- SO IF YOU LOOK BACK IN LIKE THE  
03:00:06 8 MID-80'S, THERE WERE HALF A DOZEN, A DOZEN DIFFERENT COMPETING  
03:00:15 9 PROTOCOLS, OF WHICH IP WAS ONE. SO IN THE CISCO STYLE, THEY DO  
03:00:22 10 SHOW IP SOMETHING.  
03:00:24 11 BY THE TIME JUNIPER ENTERED THE WORLD, IP WAS THE CLEAR  
03:00:29 12 WINNER, SO WE DIDN'T NEED THE IP AS A QUALIFIER IN OUR  
03:00:33 13 COMMANDS. THERE WAS NO USE FOR IT. SO THE OBVIOUS CHOICE WAS  
03:00:38 14 TO NOT USE IT. WHEREAS, THEIR ENGINEERS WERE OPERATING IN A  
03:00:41 15 DIFFERENT TIMEFRAME, I THINK THAT WAS A REASONABLE CHOICE.  
03:00:45 16 Q. OKAY.  
03:00:47 17 MR. SHAHER, SO IT'S IMPORTANT TO LOOK AT ALSO THE TIME  
03:00:50 18 WHEN COMMANDS ARE CREATED TO ASSESS WHETHER THAT WOULD HAVE  
03:00:54 19 BEEN OBVIOUS TO YOU OR NOT; ISN'T THAT TRUE?  
03:00:56 20 A. SURE.  
03:00:56 21 Q. AND YOU NEVER SAT DOWN, OR TO YOUR KNOWLEDGE ANYONE AT  
03:01:05 22 JUNIPER SAT DOWN AND COPIED CISCO CLI COMMANDS OUT OF CISCO  
03:01:09 23 EQUIPMENT TO YOUR KNOWLEDGE; DO YOU KNOW OF ANYTHING LIKE THAT  
03:01:11 24 HAPPENING?  
03:01:11 25 A. I DO NOT.

03:01:12 1 Q. TO YOUR KNOWLEDGE HAS ANYONE AT JUNIPER SAT DOWN AND  
03:01:14 2 COPIED SCREEN OUTPUTS OUT OF CISCO EQUIPMENT RUNNING AT  
03:01:18 3 JUNIPER?

03:01:18 4 A. NO.

03:01:19 5 Q. AND TO YOUR KNOWLEDGE HAS ANYONE SAT DOWN AT JUNIPER AND  
03:01:23 6 COPIED HELP DESCRIPTION COMING OUT OF CISCO EQUIPMENT RUNNING  
03:01:26 7 AT JUNIPER?

03:01:27 8 A. NO.

03:01:27 9 Q. DID YOU SLAVISHLY COPY ANYTHING FROM CISCO IN TERMS OF THE  
03:01:31 10 CLI DESIGN?

03:01:31 11 A. WE SLAVISHLY TRIED TO BE INDEPENDENT AND DIFFERENT.

03:01:34 12 MR. PAK: THANK YOU.

03:01:37 13 THE COURT: MR. WONG?

03:01:37 14 **RECROSS-EXAMINATION**

03:01:50 15 BY MR. WONG:

03:01:50 16 Q. NOW MR. SHAFER, MY QUESTIONS ARE ABOUT THE JUNOS-E CLI  
03:01:55 17 THAT JUNIPER SOLD FROM 2002 FOR 12 YEARS.

03:01:59 18 WOULD YOU BE SURPRISED, MR. SHAFER, IF HUNDREDS OF THE  
03:02:03 19 COMMANDS LISTED ON THIS EXHIBIT WERE SUPPORTED BY THE JUNIPER  
03:02:08 20 JUNOS-E CLI?

03:02:12 21 A. NO, I WOULDN'T BE. I THINK THEIR GOAL WAS TO BE CLOSER TO  
03:02:16 22 IOS THAN WE CERTAINLY WANT TO BE.

03:02:19 23 Q. I'M SORRY. CAN YOU SAY THAT AGAIN?

03:02:21 24 A. THEIR GOAL WAS TO BE CLOSER TO IOS STYLE THAN WE WANTED TO  
03:02:25 25 BE, WE IN THE JUNOS SIDE, WANTED TO BE.

04:32:49 1 A. I'M SORRY. THE LAW, AS IT'S BEEN EXPLAINED TO ME, DOESN'T  
04:32:53 2 GIVE YOU A NUMBER TO LOOK FOR. IT'S JUST -- YOU JUST LOOK AT  
04:32:56 3 THIS AS ONE OF THE FACTORS.

04:33:01 4 BUT MY UNDERSTANDING IS THAT CISCO, IN THIS LAWSUIT WITH  
04:33:04 5 HUAWEI THAT WE KEEP HEARING ABOUT, CAME TO SOME SETTLEMENT  
04:33:08 6 WHERE THEY WROTE DOWN THAT 10 TO 20 PERCENT COMMAND NAME  
04:33:13 7 OVERLAP WAS NORMAL.

04:33:14 8 Q. OKAY. IF WE COULD LOOK AT EXHIBIT 4672 THAT'S ALREADY IN  
04:33:18 9 EVIDENCE.

04:33:22 10 AND I THINK IF WE COULD GO TO PAGE 11, MR. DAHM. AND BLOW  
04:33:30 11 UP THE TOP PARAGRAPH, PLEASE.

04:33:37 12 SO IS THIS A LITTLE ROMAN NUMERAL FOUR, IS THAT WHAT YOU  
04:33:41 13 ARE REFERRING TO, DR. BLACK?

04:33:44 14 A. THAT'S WHAT I WAS REFERRING TO, YES.

04:33:46 15 Q. AND COULD YOU JUST READ THAT IN?

04:33:48 16 A. SURE. "THE NORMAL RANGE OF TEN PERCENT TO 20 PERCENT  
04:33:52 17 SIMILARITY BETWEEN THE CLI COMMAND NAMES USED BY INDUSTRY  
04:33:56 18 PARTICIPANTS AND THE CISCO CLI."

04:34:00 19 Q. AND YOU UNDERSTAND THIS IS A DOCUMENT THAT CISCO AGREED  
04:34:03 20 TO?

04:34:03 21 A. THAT'S MY UNDERSTANDING.

04:34:05 22 Q. WERE YOU ABLE TO ASSESS THE SUBSTANTIALITY WITH REGARD TO  
04:34:17 23 HELP STRINGS?

04:34:20 24 A. YEAH. NOW WE ARE MOVING TO A DIFFERENT OPERATING SYSTEM.  
04:34:23 25 THIS IS XR, AND MY UNDERSTANDING IS THAT CISCO IS ONLY

04:34:26 1 ASSERTING ITS HELP STRINGS FOR THAT ONE OPERATING SYSTEM. AND  
04:34:34 2 I COMPARED THAT TO THE TOTAL NUMBER OF HELP STRINGS.

04:34:37 3 IN ORDER TO DO THAT, I HAD TO GO OVER TO CISCO'S  
04:34:39 4 ATTORNEY'S LAW OFFICE WHERE THEY HAD A COMPUTER THAT HAD SOURCE  
04:34:42 5 CODE FOR IOS XR, AND I WROTE A SHORT SCRIPT THAT COUNTED UP HOW  
04:34:47 6 MANY TOTAL HELP STRINGS THERE ARE THERE, AND I PUT THAT  
04:34:50 7 NUMERATOR OVER THE DENOMINATOR I COMPUTED.

04:34:55 8 Q. WHAT DID YOU GET FOR THE TOTAL NUMBER OF HELP STRINGS?

04:34:58 9 A. I THINK IT WAS -- I DIDN'T KNOW THERE WAS GOING TO BE A  
04:35:01 10 TEST. I THINK IT WAS 221 OVER 52,290.

04:35:06 11 Q. WELL THAT WAS MORE PRECISION THAN I COULD HAVE ASKED.  
04:35:11 12 52,000 TOTAL HELP STRINGS?

04:35:12 13 A. THEREABOUTS, YEAH.

04:35:13 14 Q. ALL RIGHT. IF WE COULD LOOK AT SLIDE 28, PLEASE. WHAT  
04:35:25 15 DOES THIS SHOW, DR. BLACK?

04:35:27 16 A. IT SHOWS THE MATH THAT I WAS JUST TRYING TO REMEMBER.  
04:35:30 17 IT'S THE 221 ACCUSED IOS XR HELP STRINGS OVER THE TOTAL THAT I  
04:35:36 18 COUNTED WITH MY PROGRAM OF 52,000. AND IT'S ABOUT .4 PERCENT.

04:35:43 19 Q. OKAY. I WANT TO ASK YOU ONE MORE QUESTION ABOUT THIS  
04:35:47 20 THIRD FAIR USE FACTOR, SUBSTANTIALITY.

04:35:52 21 DID YOU LOOK AT THE DETAILS OF THE ARISTA COMMANDS TO SEE  
04:35:56 22 WHAT SORT OF OTHER PARAMETERS OR FACTORS GO INTO THE ACTUAL  
04:36:04 23 EXECUTION OF THE COMMANDS?

04:36:05 24 A. YEAH. IN FACT, THAT'S AN IMPORTANT DETAIL.

04:36:08 25 SO WHEN CISCO ACCUSES THESE COMMANDS, A LOT OF THEM AREN'T

08:24:15

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,	)	CV-14-5344-BLF
	)	
PLAINTIFF,	)	SAN JOSE, CALIFORNIA
	)	
VS.	)	DECEMBER 7, 2016
	)	
ARISTA NETWORKS, INC.,	)	VOLUME 10
	)	
DEFENDANT	)	PAGES 2158-2405
_____	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: DAVID A. NELSON  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

09:43:14 1 A. I DIDN'T SEE IT, BECAUSE IT EXISTED A LONG TIME BEFORE  
09:43:18 2 IPV6 CAME ALONG, BUT YOU COULD COME BACK AND CHANGE YOUR  
09:43:22 3 TECHNOLOGY TO AS THE V4 AND PEOPLE WOULD KNOW WHAT THAT MEANT.

09:43:25 4 Q. SO JUST SO WHEN YOU ARE GOING THROUGH AND DOING THAT  
09:43:28 5 ANALYSIS ON ORIGINALITY, YOU DIDN'T OFFER ANY OPINION THAT ANY  
09:43:31 6 OF THE ACTUAL COMMAND TERMS WERE FOUND IN ANY OF THESE  
09:43:35 7 DOCUMENTS YOU LOOKED AT, RIGHT? THE COMMANDS THEMSELVES?

09:43:38 8 A. YOU SAID COMMAND TERMS AT FIRST, SIR?

09:43:41 9 Q. THEN I MISSPOKE, AND I SHOULD CORRECT THAT SO THAT WE HAVE  
09:43:44 10 A CLEAN RECORD HERE.

09:43:47 11 YOU DIDN'T FIND THAT ANY OF THE 506 ASSERTED COMMANDS THAT  
09:43:50 12 WE HAVE IN THE CASE, WERE FOUND IN ANY OF THE PRE-EXISTING  
09:43:55 13 DOCUMENT; RIGHT?

09:43:56 14 A. WELL, IF YOU LOOK HERE, SOME OF THESE ARE A SINGLE WORD,  
09:44:00 15 OR AT LEAST IF YOU CONSIDER THE HYPHENATION TO COMBINE THEM  
09:44:04 16 INTO A SINGLE WORD, ADDRESS FAMILY, AND AGGREGATE ADDRESS, I  
09:44:08 17 DID FIND, PERHAPS WITHOUT THE HYPHEN.

09:44:10 18 AND SINCE THAT'S THE ENTIRETY OF THE COMMAND, AS WRITTEN,  
09:44:13 19 THEN IN THAT CASE I DID FIND THE ENTIRE COMMAND.

09:44:18 20 Q. OKAY. WITH RESPECT TO ANY OF THE OTHERS, YOU DIDN'T OFFER  
09:44:23 21 ANY OPINIONS, CORRECT?

09:44:24 22 A. I DID NOT.

09:44:24 23 Q. SO WHAT YOU DID IS WENT THROUGH AND FOUND INDIVIDUAL WORDS  
09:44:29 24 AND SAID HEY, THESE WORDS I'VE SEEN BEFORE; RIGHT, THAT'S THE  
09:44:33 25 OWNING OPINION YOU ARE OFFERING ON THAT; RIGHT?



09:44:35 1 A. I WOULD SAY MORE THAN I'VE SEEN BEFORE, I'M SAYING THEY  
09:44:39 2 ACTUALLY APPEAR, FOR THE GREEN ONES, IN THE STANDARDS  
09:44:42 3 DOCUMENTS.

09:44:42 4 Q. RIGHT. BUT YOU WOULD AGREE WITH ME -- LET'S TAKE A BOOK,  
09:44:47 5 FOR EXAMPLE. ANYBODY CAN WRITE A BOOK. IF I WENT BACK AND  
09:44:50 6 LOOKED IN A DICTIONARY, I WOULD FIND ALL THOSE WORDS; RIGHT?

09:44:52 7 A. SURE, BUT WE ARE NOT LOOKING AT A DICTIONARY WHICH IS ALL  
09:44:57 8 IN ENGLISH, WE ARE LOOKING AT A VERY SPECIFIC, LIMITED SET OF  
09:44:59 9 INDUSTRY STANDARD DOCUMENTS.

09:45:00 10 Q. WE COULD LIMIT IT A LITTLE BIT MORE. I MEAN, WE COULD  
09:45:02 11 BEING TALKING ABOUT A SPORT; RIGHT? LET'S JUST SAY IT'S A  
09:45:05 12 SOCCER MATCH. THEN I HAVE A LIMITED SETS OF WORDS, BUT I COULD  
09:45:08 13 PROBABLY FIND ALL OF THOSE WORDS THAT ANYBODY USES TO DESCRIBE  
09:45:12 14 A SOCCER MATCH IN SOME PRE-EXISTING BOOKS; RIGHT?

09:45:15 15 A. PERHAPS.

09:45:15 16 Q. YEAH. I MEAN, USUALLY WHEN WE WRITE THINGS, WE WRITE  
09:45:18 17 THINGS USING PRE-EXISTING WORDS; RIGHT?

09:45:21 18 A. RIGHT. BUT I WOULD SAY SOME OF THESE REALLY AREN'T EVEN  
09:45:24 19 WORDS.

09:45:24 20 Q. WELL, RIGHT, BECAUSE SOME OF THEM YOU LEFT WHITE, WHICH  
09:45:27 21 MEANS WITH THOSE COMMANDS CISCO, JUST MADE THOSE UP; RIGHT?

09:45:30 22 A. NO, THAT'S NOT WHAT IT MEANS.

09:45:32 23 Q. WELL, IT MEANS IT'S NOT COMMON; RIGHT?

09:45:37 24 A. YES.

09:45:37 25 Q. IT MEANS YOU DIDN'T FIND IT IN ANY INDUSTRY STANDARD

09:45:43 1

DOCUMENTS?

09:45:43 2

A. CORRECT.

09:45:44 3

Q. AND IT MEANS IT'S NOT A LEGACY COMMAND TERM; RIGHT?

09:45:47 4

A. CORRECT.

09:45:47 5

Q. SO NOW I WANT TO TALK A LITTLE BIT THEN, JUST SO THAT WE

09:45:51 6

ARE ALL CLEAR, TO DISTINGUISH THE, WHAT YOU TALKED ABOUT THE

09:45:58 7

USAGE OF A NUMBER OF COMMANDS; RIGHT? THAT WAS THE SECOND PART

09:46:01 8

OF YOUR TESTIMONY?

09:46:02 9

A. NOT RELEVANT TO THE SCREEN WE ARE LOOKING AT.

09:46:04 10

Q. THAT'S EXACTLY WHAT I WANT TO ESTABLISH. SO WHEN YOU

09:46:09 11

TALKED ABOUT USAGE OF COMMANDS TO OTHER FOLKS THAT ALL COMES

09:46:13 12

AFTER CISCO?

09:46:13 13

A. AFTER CISCO.

09:46:14 14

Q. SO NOBODY SHOULD GET CONFUSED THAT YOU ARE OFFERING THE

09:46:17 15

OPINION THAT ALL OF THOSE CAME BEFORE CISCO CAME UP WITH THE

09:46:20 16

COMMAND TERMS OR THE COMMAND NAMES THAT ARE AT ISSUE HERE?

09:46:24 17

A. NO, I HOPE I WAS CLEAR ON THAT POINT.

09:46:26 18

Q. OKAY. SO NOW ONE THING, YOU WERE HERE FOR SOME OF THE

09:46:32 19

TESTIMONY OF THE CISCO ENGINEERS; RIGHT?

09:46:33 20

A. YES, I WAS.

09:46:34 21

Q. AND YOU HEARD THIS IDEA ABOUT THE SEQUENCING OF THE TERMS;

09:46:39 22

RIGHT?

09:46:39 23

A. I'M VERY FAMILIAR WITH THAT IDEA, SURE.

09:46:41 24

Q. RIGHT. AND YOU DIDN'T -- I DIDN'T HEAR YOU ADDRESS THAT

09:46:45 25

IN YOUR DIRECT TESTIMONY?

09:55:21 1 IN CERTAIN CASES, I THINK THE DOCUMENT IS TALKING ABOUT  
09:55:24 2 THAT AS ONE OF THE THINGS YOU HAVE TO DECIDE IF YOU GOING TO  
09:55:28 3 TERMINATE OR LEAVE IT EXTENSIBLE.  
09:55:30 4 Q. RIGHT. EXACTLY. ONE OF THE THINGS YOU HAVE TO DECIDE  
09:55:37 5 WHERE, YOU, IS BEING AN ENGINEER CREATING THE COMMAND; RIGHT?  
09:55:41 6 A. THE PROGRAMMER CREATING THE COMMAND HAS TWO CHOICES, YES.  
09:55:45 7 Q. YEAH, EXACTLY.  
09:55:47 8 OKAY. SO NOW I WOULD LIKE TO GO TO YOUR SLIDE 14.  
09:55:57 9 A. IN MY DEMONSTRATIVES?  
09:55:58 10 Q. YEAH. SO HERE YOU WERE TALKING ABOUT THE MODES AND  
09:56:09 11 PROMPTS IN PRIOR SYSTEMS; RIGHT?  
09:56:10 12 A. YES.  
09:56:10 13 Q. AND YOU SET OUT TWO MODES, PRIVILEGE MODE AND NONPRIVILEGE  
09:56:16 14 MODE; RIGHT?  
09:56:17 15 A. YES.  
09:56:17 16 Q. SO IN ALL OF THE THINGS YOU LOOKED THROUGH, YOU NEVER  
09:56:19 17 FOUND A GLOBAL CONFIGURATION MODE, CORRECT?  
09:56:21 18 A. NOT PRIOR TO CISCO.  
09:56:23 19 Q. RIGHT. AND IN ALL THE THINGS YOU LOOKED FOR, YOU NEVER  
09:56:26 20 FOUND AN INTERFACE CONFIGURATION MODE, CORRECT?  
09:56:28 21 A. THAT'S CORRECT.  
09:56:29 22 Q. AS WELL AS THE CORRESPONDING PROMPTS TO THOSE, CORRECT?  
09:56:33 23 A. IF YOU CAN CLARIFY PROMPT. THE HASH SIGN IS STILL USED IN  
09:56:40 24 THE MODES YOU NAMED.  
09:56:40 25 Q. CORRECT. BUT THE PROMPTS FOR THOSE MODE INCLUDE THE

09:56:45 1 CONFIGURATION LETTERS, CORRECT?

09:56:47 2 A. THEY INCLUDE THE HOST NAME OF THE DEVICE, WHICH IS

09:56:52 3 CONFIGUREABLE BY THE USER, THEN IN PARENTHESES, THAT CONFIG AND

09:56:57 4 CONFIG-IF.

09:56:57 5 Q. RIGHT. YOU DIDN'T FIND THAT PROMPT IN ANY OF THE MANY

09:57:01 6 DOCUMENTS THAT YOU LOOKED THROUGH FOR SYSTEMS THAT CAME BEFORE,

09:57:04 7 CORRECT?

09:57:04 8 A. THE HOST NAME WOULD BE THERE IN THOSE DOCUMENTS, BUT THAT

09:57:07 9 PARENTHETICAL, I DIDN'T FIND.

09:57:08 10 Q. RIGHT.

09:57:10 11 AND YOU UNDERSTAND, SIR, THAT WHAT'S BEING ASSERTED IN THE

09:57:13 12 CASE IS THAT PARTICULAR ARRANGEMENT OF THOSE FOUR MODES AND

09:57:16 13 PROMPTS; RIGHT?

09:57:16 14 A. I ACTUALLY HAVE BEEN UNCLEAR WHAT EXACTLY CISCO IS

09:57:20 15 CLAIMING PROTECTION FOR THEIR -- I UNDERSTAND IT'S NOT THE

09:57:25 16 ACTUAL WORD INSIDE THE PARENTHESIS, MY UNDERSTANDING NOW IS

09:57:32 17 IT'S THE ORDER OF THE WORDS; IS THAT CORRECT?

09:57:35 18 Q. IT'S THE ARRANGEMENT OF THE MODES AND PROMPTS, CORRECT?

09:57:38 19 SO YOU UNDERSTAND THAT?

09:57:39 20 A. I THINK SO.

09:57:40 21 Q. SO TWO OF THE MODES YOU DIDN'T FIND AT ALL; RIGHT?

09:57:43 22 A. I DIDN'T FIND THOSE TWO MODES YOU NAMED, YES.

09:57:45 23 Q. RIGHT. SO THEN IT GOES WITHOUT SAYING THAT THAT

09:57:48 24 PARTICULAR ARRANGEMENT OF THE FOUR MODES AND PROMPTS, YOU

09:57:51 25 DIDN'T FIND AT ALL?

09:57:52 1 A. I DIDN'T FIND THAT ORDERING BECAUSE I DIDN'T FIND THE  
09:57:55 2 MODES.

09:57:56 3 Q. RIGHT.

09:57:56 4 SO NOW I WANT TO TALK ABOUT A FEW OTHER THINGS.

09:58:09 5 SO ONE OF THE THINGS YOU HAD SAID IS YOU DIDN'T THINK THAT  
09:58:16 6 THERE WAS A SUBSTANTIAL AMOUNT OF THE WORK THAT WAS TAKEN,  
09:58:24 7 CORRECT?

09:58:24 8 A. I'M UNCLEAR ON WHAT YOU ARE ASKING.

09:58:28 9 Q. OKAY. SO ONE OF YOUR FAIR USE FACTORS, YOU TALKED ABOUT  
09:58:31 10 THE AMOUNT OF THE WORK. YOU PUT UP A SLIDE AND SAID THERE'S  
09:58:37 11 441 COMMANDS THAT ARE ACCUSED FROM IOS AND THERE'S 16,000  
09:58:41 12 COMMANDS IN ALL OF IOS; RIGHT?

09:58:43 13 A. I RECALL THAT, YES.

09:58:44 14 Q. YOU DIDN'T ADDRESS THE QUALITY OF THAT THOUGH; RIGHT?

09:58:55 15 A. IN WHAT SENSE DO YOU MEAN THE "QUALITY" OF THAT?

09:58:59 16 Q. THE QUALITY OF WHAT WAS TAKEN; RIGHT?

09:59:03 17 A. NOT IN THE WAY I'M UNDERSTANDING YOUR QUESTION.

09:59:08 18 Q. RIGHT. YOU SIMPLY JUST LOOKED AT THE NUMBERS, YOU  
09:59:11 19 COMPARED ONE NUMBER TO ANOTHER, CORRECT?

09:59:14 20 A. I TOOK CISCO'S NUMBER DIVIDED BY CISCO'S NUMBER.

09:59:17 21 Q. THAT'S IT?

09:59:18 22 A. THAT'S IT.

09:59:19 23 Q. OKAY. SO SIR, YOU WERE HERE FOR MR. DR. LI -- EXCUSE ME,  
09:59:25 24 DR. LI'S TESTIMONY, CORRECT?

09:59:26 25 A. I WAS.

09:59:26 1 Q. AND HE WAS TALKING ABOUT PROCKET?

09:59:28 2 A. HE WAS.

09:59:29 3 Q. AND YOU RECALL WHEN HE SAID IT DOESN'T MAKE ANY SENSE TO  
09:59:33 4 TAKE COMMANDS FOR FEATURES THAT AREN'T IN YOUR PRODUCTS?

09:59:38 5 A. I THINK HE MIGHT HAVE SAID THAT.

09:59:39 6 Q. RIGHT. AND YOU DON'T DISAGREE WITH THAT; RIGHT?

09:59:44 7 A. I DON'T GIVE AN OPINION ONE WAY OR THE OTHER IN MY REPORT,  
09:59:49 8 SIR.

09:59:49 9 Q. I'M NOT ASKING YOU WHETHER YOU GAVE AN OPINION IN YOUR  
09:59:52 10 REPORT, I'M JUST ASKING WHETHER YOU AGREE WITH THAT. IT MAKES  
09:59:55 11 SENSE; RIGHT?

09:59:56 12 A. I MEAN, SO ARISTA IS EXTENSIBLE, ARISTA COULD TAKE AND  
10:00:00 13 IMPLEMENT COMMANDS TO CREATE NEW FEATURES IF -- IF THERE'S NOT  
10:00:06 14 A HARDWARE FEATURE IN THE DEVICE, I DON'T THINK YOU WANT TO  
10:00:10 15 TAKE COMMANDS THAT DESCRIBE A FEATURE THAT'S NOT PRESENT.

10:00:12 16 Q. YEAH, THAT'S WHAT I'M SAYING.

10:00:14 17 AND YOU KNOW, WHAT YOU ARE SAYING IS THAT IF ARISTA ADDED  
10:00:17 18 MORE FEATURES, THEY MAY WANT TO TAKE MORE COMMANDS; RIGHT?

10:00:21 19 A. OR INVENT THEM ON THEIR OWN DEPENDING UPON THE OUTCOME OF  
10:00:25 20 THE LAWSUIT.

10:00:25 21 Q. RIGHT. WE KNOW THEY DIDN'T INVENT THEM ON THEIR OWN;  
10:00:28 22 RIGHT, WE KNOW THEY TOOK THEM?

10:00:29 23 A. IT SAID THE MAJORITY OF THE COMMANDS THEY ACTUALLY DID  
10:00:33 24 CREATE ON THEIR OWN.

10:00:33 25 Q. OKAY. THE 506 THAT ARE AT ISSUE IN THIS CASE, THEY TOOK

10:00:37 1 THEM; RIGHT?

10:00:38 2 A. I DON'T KNOW HOW THEY GOT THERE, BUT THEY ARE -- THEY ARE  
10:00:41 3 PRESENT IN BOTH PRODUCTS.

10:00:42 4 Q. OKAY. EXACTLY.

10:00:43 5 SO THEN THE, WHAT YOU ARE SAYING IS -- WE KNOW THIS  
10:00:47 6 HAPPENED OVER TIME; RIGHT? ARISTA ADDED FEATURES, YOU'RE AWARE  
10:00:50 7 OF THAT, THEY ADDED FEATURES AND THEN THEY TOOK MORE COMMANDS;  
10:00:53 8 RIGHT.

10:00:53 9 A. I HAVEN'T ANALYZED THE TIMELINE OF THINGS, I LOOKED AT THE  
10:00:58 10 LATEST PRODUCT.

10:00:59 11 Q. OH, YOU DIDN'T LOOK AT THAT, SO YOU DON'T KNOW ONE WAY OR  
10:01:02 12 THE OTHER; RIGHT?

10:01:03 13 A. I DIDN'T ANALYZE THE PROGRESSION OVER TIME THAT YOU JUST  
10:01:06 14 DESCRIBED.

10:01:06 15 Q. SO YOU DON'T HAVE ANY BASIS TO DISPUTE DR. ALMEROOTH'S  
10:01:10 16 OPINION ON THAT ISSUE, CORRECT?

10:01:11 17 A. WHAT DO YOU MEAN ON THAT ISSUE?

10:01:13 18 Q. MEANING THE ADDITION OF COMMANDS OVER TIME, AS ARISTA TOOK  
10:01:16 19 MORE FEATURES?

10:01:18 20 A. I DON'T RECALL ANY ANALYSIS BY DR. ALMEROOTH THAT LOOKS AT  
10:01:21 21 THAT QUESTION.

10:01:22 22 Q. OKAY. SO NOW, SIR, I WANT TO TALK A BIT MORE ABOUT THE --  
10:01:30 23 THIS QUALITY POINT.

10:01:33 24 NOW YOU'RE AWARE OF, YOU'VE SEEN IN THIS CASE, DOCUMENTS  
10:01:39 25 WHERE ARISTA ITSELF SAID THAT IT WAS A 99.999 PERCENT DROP-IN

10:08:12 1 BY MR. NELSON:

10:08:12 2 Q. SO I WOULD LIKE TO GO TO THE THIRD PAGE OF THIS DOCUMENT.

10:08:16 3 AND YOU WILL SEE THAT THERE'S A SECTION THERE THAT'S CALLED CLI  
10:08:19 4 USABILITY?

10:08:23 5 A. I SEE IT.

10:08:24 6 Q. AND THE FIRST STATEMENT THERE IS, "THE SYSTEM IS A VERY  
10:08:30 7 CLOSE CLONE OF THE IOS CLI. THIS IS A MAJOR PLUS FOR THE  
10:08:34 8 MAJORITY OF CUSTOMERS WHO HAVE ALREADY CISCO TRAINED STAFF."

10:08:38 9 DO YOU SEE THAT?

10:08:39 10 A. I SEE IT.

10:08:40 11 Q. SO YOU DON'T HAVE ANY BASIS TO DISPUTE THAT THESE  
10:08:47 12 STATEMENTS LIKE THESE ARE STATEMENTS THAT ARISTA WAS MAKING TO  
10:08:50 13 POTENTIAL CUSTOMERS TO SELL ITS PRODUCT, CORRECT?

10:08:52 14 A. I MEAN, I CAN VERIFY THAT I'VE READ THE WORDS YOU JUST  
10:08:56 15 SPOKE, AND THIS SEEMS TO BE FROM MS. ULLAL.

10:08:59 16 Q. THAT'S WHAT I'M -- YOU DON'T HAVE ANY BASIS TO DISPUTE  
10:09:02 17 THAT; RIGHT?

10:09:04 18 A. I MEAN, ARE YOU ASKING FOR AN OPINION ABOUT HOW I FEEL  
10:09:09 19 ABOUT THIS ASSERTION, OR ARE YOU SAYING WILL I CONFIRM IT SEEMS  
10:09:13 20 SHE'S SAID THIS?

10:09:14 21 Q. I'M NOT ASKING YOU TO SPECULATE, SIR. I'M ASKING THE  
10:09:17 22 OPPOSITE QUESTION, WHICH IS, YOU DON'T HAVE ANY BASIS TO  
10:09:20 23 DISPUTE THE STATEMENT THAT'S MADE HERE?

10:09:22 24 A. ONCE AGAIN, I THINK I DO. I DID AN INDEPENDENT ANALYSIS  
10:09:26 25 THAT WOULD RUN COUNTER TO THE CLAIM MADE.



10:09:28 1 Q. THE QUESTION IS, YOU DON'T HAVE ANY BASIS TO DISPUTE THAT  
10:09:31 2 ARISTA MADE THESE STATEMENTS TO POTENTIAL CUSTOMERS? THAT'S  
10:09:35 3 ALL I'M SAYING?

10:09:35 4 A. THERE, I AGREE.

10:09:36 5 Q. OKAY. NOW LET'S TALK A LITTLE BIT, I WANT TO GO BACK,  
10:09:46 6 THERE WAS A QUESTION I WANTED TO ASK YOU ABOUT ORIGINALITY AS  
10:09:49 7 WELL.

10:09:52 8 SO YOU WERE HERE, I THINK WE'VE ALREADY ESTABLISHED, FOR  
10:09:55 9 DR. LI'S TESTIMONY, CORRECT?

10:09:57 10 A. I WAS.

10:09:58 11 Q. AND HE TALKED ABOUT SOME OF THE EARLY WORK ON THE CREATION  
10:10:01 12 OF JUNOS; RIGHT?

10:10:03 13 A. YES.

10:10:05 14 Q. OKAY. AND ONE OF THE THINGS HE SAID IS THEY TRIED TO USE  
10:10:09 15 INDUSTRY STANDARD TERMS WHERE THEY COULD; RIGHT?

10:10:12 16 A. I BELIEVE HE SAID THAT.

10:10:13 17 Q. YET, HE ALSO SAID THAT THEY CAME UP WITH A COMPLETELY  
10:10:17 18 DIFFERENT CLI FROM THE CISCO CLI; RIGHT?

10:10:22 19 A. THERE ARE SIMILARITIES, THERE ARE DIFFERENCES. I DON'T  
10:10:26 20 KNOW IF HE SAID THE WORDS COMPLETELY DIFFERENT, BUT --

10:10:29 21 Q. VERY DIFFERENT, SUBSTANTIAL DIFFERENCES, CORRECT?

10:10:31 22 A. I DON'T REMEMBER HIS WORDS.

10:10:32 23 Q. YOU DON'T RECALL? BUT YOU DON'T HAVE ANY BASIS TO DISPUTE  
10:10:36 24 HIS TESTIMONY; RIGHT?

10:10:37 25 A. I DON'T DISPUTE ANYTHING HE SAID.

10:13:39 1 A. I MEAN, I WAS OFFERING IT TO BOTH SIDES TO MAKE WHATEVER  
10:13:46 2 THEY WANT. I THOUGHT IT WAS AN INTERESTING QUESTION TO LOOK  
10:13:50 3 AT, BUT PRIMARILY THE FAIR USE, THIRD FACTOR ANALYSIS, WAS THE  
10:13:55 4 COMPARISON OF THE COMMANDS TO THE WHOLE AND SO FORTH.

10:13:57 5 Q. BUT SIR, YOU DON'T THINK YOU CAN GO OUT -- THAT IT'S A  
10:14:01 6 GOOD IDEA FOR A COMPANY TO GO OUT AND SUE EVERYBODY; RIGHT?

10:14:05 7 A. I SURE HOPE NOT.

10:14:06 8 Q. RIGHT. IN OTHER WORDS, YOU WOULD WANT TO PICK A BLATANT  
10:14:14 9 VIOLATOR AND FILE AN ACTION AGAINST THEM; RIGHT?

10:14:16 10 A. I DON'T MAKE THESE DECISIONS, BUT THAT WOULD MAKE SENSE.

10:14:20 11 Q. WELL, IN FACT, IF YOU GO -- I THINK THERE'S A PAPER OF  
10:14:23 12 YOURS IN YOUR BINDER, "THE IMPOSSIBILITY OF TECHNOLOGY-BASED  
10:14:28 13 DRM."

10:14:29 14 A. COULD YOU HELP ME FIND IT?

10:14:31 15 Q. IT SHOULD BE UNDER A TAB TOWARDS THE BACK?

10:14:45 16 MR. PAK: 4831, MR. NELSON.

10:14:50 17 MR. NELSON: IT'S EXHIBIT 4831.

10:14:52 18 MR. PAK: NO, BUT I THINK THERE'S A TAB AT THE END.

10:14:56 19 MR. NELSON: THERE'S A TAB IN YOUR PAPER, "THE  
10:14:58 20 POSSIBILITY OF DRM AND A MODEST SUGGESTION."

10:15:09 21 THE WITNESS: AND IT'S IN THE BIG BINDER?

10:15:11 22 THE COURT: NOT THE BLUE BINDER.

10:15:12 23 MR. NELSON: IN THE FIRST BINDER YOU WERE LOOKING IN.

10:15:23 24 THE WITNESS: AND YOU SAID THE TAB WAS MARKED WITH  
10:15:25 25 THE TITLE?

10:20:57 1 Q. OKAY. SO THEN GO BACK TO THE IPAD EXAMPLE, YOU ARE NOT  
10:21:01 2 SAYING IF I TAKE SOMEBODY'S BOOK AND PUT IT ON THE IPAD, THAT  
10:21:05 3 THAT'S A TRANSFORMATION OF THE WORK AND THAT'S A FAIR USE;  
10:21:08 4 RIGHT?

10:21:08 5 A. I THINK THAT'S A DEEP QUESTION. AND SITTING HERE, I'M NOT  
10:21:10 6 SURE I COULD TELL YOU, GIVE YOU AN ANSWER.

10:21:12 7 I MEAN, YOU COULD PUT IT ON AN IPAD AND ADD FEATURES THAT  
10:21:16 8 MAKE THE CHARACTERS DANCE OR DRAW PICTURES OR DO ALL KINDS OF  
10:21:20 9 THINGS YOU COULD DO ON A COMPUTER THAT YOU CAN'T DO ON PAPER.

10:21:25 10 I'M NOT SURE IF YOU ARE TALKING ABOUT THAT KIND OF  
10:21:28 11 ADDITIONAL FUNCTIONALITY OR SIMPLY JUST PUTTING THE PRINTED  
10:21:31 12 PAGE ON AN IPAD.

10:21:33 13 Q. I'M JUST TRYING TO ESTABLISH WHAT DEFINITION THAT YOU  
10:21:36 14 APPLIED WHEN YOU WERE TRYING TO GIVE YOUR OPINIONS ON WHAT THEY  
10:21:40 15 TRANSFORMATION WAS FOR PURPOSES OF FAIR USE; RIGHT?

10:21:42 16 A. OKAY. BUT TO BE CLEAR, I'M AN EXPERT ON COMPUTER SCIENCE,  
10:21:46 17 AND I'M LOOKING AT FEATURES THAT ARE BASED IN COMPUTER SCIENCE.

10:21:49 18 AND IF YOU TALK ABOUT BOOKS AND THE QUALITATIVE EXPERIENCE  
10:21:52 19 OF A HUMAN READER ON AN IPAD, I'M NOT AN EXPERT THERE.

10:21:56 20 Q. OKAY. SO LET ME -- YEAH, THIS IS THE ONE I WANT.

10:22:07 21 SO YOU AGREE THAT THE USE THAT ARISTA IS MAKING OF THE  
10:22:11 22 CISCO CLI IS COMMERCIAL; RIGHT?

10:22:14 23 A. I THINK THAT'S CLEAR.

10:22:15 24 Q. I MEAN, THEY ARE OUT THERE TRYING TO TARGET CISCO  
10:22:20 25 CUSTOMERS; RIGHT?

10:22:21 1 A. I DON'T KNOW. I THINK THEY ARE COMMERCIALY SELLING THE  
10:22:25 2 PRODUCTS.  
10:22:26 3 Q. RIGHT. THAT'S THE PURPOSE OF USING THE CLI; RIGHT?  
10:22:29 4 A. THAT'S ONE PURPOSE.  
10:22:32 5 Q. WELL, THAT'S THE MAIN PURPOSE; RIGHT? THEY'RE A BUSINESS,  
10:22:39 6 THEY ARE TRYING TO SELL STUFF; RIGHT?  
10:22:40 7 A. I SURE HOPE SO.  
10:22:41 8 Q. NOW LET'S TALK A BIT ABOUT THE COMMON USAGE, RIGHT, THE  
10:22:47 9 COMMON USE OF STUFF THAT YOU DID.  
10:22:50 10 A. WE ARE SKIPPING AROUND A LITTLE. YOU ARE TALKING ABOUT  
10:22:53 11 WIDESPREAD USE BY OTHER VENDORS.  
10:22:55 12 Q. SURE.  
10:22:56 13 A. OKAY.  
10:22:57 14 Q. IS THAT THE TERMINOLOGY THAT YOU WANT TO USE? IS THERE  
10:23:00 15 SOME REASON YOU DON'T LIKE "COMMON USAGE?"  
10:23:02 16 A. NO, WE HAVE BEEN KIND OF MOVING AROUND, I'M JUST TRYING TO  
10:23:05 17 MAKE SURE I UNDERSTAND WHAT YOU ARE ASKING.  
10:23:07 18 Q. YEAH. YOU ARE GETTING A GLIMPSE INTO MY BRAIN.  
10:23:16 19 SO WHAT TERM DID YOU WANT ME TO USE?  
10:23:19 20 A. WIDESPREAD USE IS I THINK WHAT I WAS USING.  
10:23:22 21 Q. SO LET'S JUST TALK ABOUT SETS OF FRAMEWORK FOR WHAT IT IS  
10:23:26 22 THAT YOU DID?  
10:23:26 23 SO YOU SELECTED 18 VENDORS, CORRECT?  
10:23:28 24 A. YES.  
10:23:30 25 Q. AND YOU DID THAT FROM SOME MANUALS, SOME OF WHICH YOU

10:32:21 1 SO WHEN THERE'S ONLY TWO OTHERS OUT OF YOUR 18  
10:32:25 2 HAND-SELECTED, YOU WOULDN'T CALL THAT WIDESPREAD USE; RIGHT.

10:32:32 3 A. IT'S A JUDGMENT CALL, I WOULDN'T HAVE A LINE THAT SAYS  
10:32:35 4 THAT'S BELOW THAT IS NOT WIDESPREAD AND ABOVE IS. I THINK  
10:32:37 5 THERE ARE OTHER COMMANDS THAT ARE USED BY TONS OF MANY  
10:32:40 6 DIFFERENT VENDORS, I DIDN'T DRAW A LINE FOR YOU.

10:32:42 7 Q. BUT YOU ARE OFFERING OPINIONS; RIGHT?

10:32:43 8 A. I AM.

10:32:44 9 Q. SO YOU ARE SAYING THAT YOU CAN'T DRAW A LINE, YOU CAN'T  
10:32:46 10 TELL US HOW TO TEST WHETHER SOMETHING IS WIDESPREAD USE OR NOT?

10:32:51 11 A. I DON'T HAVE A LINE THAT SAYS, WIDESPREAD STARTS HERE.

10:32:54 12 Q. SO BASICALLY WHAT YOU ARE SAYING IS, WE JUST HAVE TO TRUST  
10:32:57 13 YOU. IF YOU SAY IT'S WIDESPREAD, THEN IT'S WIDESPREAD; RIGHT?

10:33:01 14 A. NO. IN FACT, I'M ASKING YOU NOT TO TRUST ME. I'M ASKING  
10:33:04 15 YOU TO USE YOUR OWN OPINION FOR WHAT IS MANY, WHAT IS  
10:33:10 16 WIDESPREAD, AND LOOK AT THE DATA AND COME TO A CONCLUSION ON  
10:33:14 17 THIS POINT.

10:33:15 18 Q. SO YOU ARE NOT OFFERING AN OPINION AT ALL AS TO WHETHER  
10:33:17 19 SOMETHING IS WIDESPREAD, CORRECT?

10:33:19 20 A. I MEAN, I USED WIDESPREAD IN MY OPINION, BUT GIVEN THE  
10:33:23 21 EVIDENCE, I WILL LET THE JURY DECIDE IF THEY THINK THAT'S  
10:33:27 22 WIDESPREAD OR NOT.

10:33:28 23 THE COURT: MAY WE TAKE A BREAK?

10:33:30 24 MR. NELSON: YOU WANT TO TAKE A BREAK, YOUR HONOR?

10:33:31 25 OKAY.

10:55:52 1 RIGHT?

10:55:52 2 A. I DIDN'T OFFER THAT SPECIFIC OPINION, NO.

10:55:55 3 Q. AND NOW IF WE GO UP TO WHERE THERE'S 7, THERE'S ANOTHER

10:56:03 4 32, 216 MINUS 185, I GET 32, SOUND RIGHT?

10:56:10 5 A. SOUNDS RIGHT.

10:56:11 6 Q. I MEAN, IT'S 31, BUT WE GOT TO ADD THE 1; RIGHT?

10:56:15 7 A. CORRECT.

10:56:16 8 Q. OKAY. SO NOW WE ARE UP TO 313?

10:56:22 9 A. I THINK SO, YES.

10:56:23 10 Q. 313 WHERE THERE'S 11 COMPANIES FROM YOUR HAND-SELECTED

10:56:27 11 SAMPLE THAT DON'T USE THE COMMAND; RIGHT?

10:56:30 12 A. 18 MINUS 7, 11, YES.

10:56:34 13 Q. RIGHT. SO THAT'S -- YOU ARE NOT OFFERING THE OPINION THAT

10:56:38 14 THAT'S WIDESPREAD USE OF THOSE COMMANDS; RIGHT?

10:56:40 15 A. I MEAN, WE ARE TALKING ABOUT A LOT OF COMPANIES NOW. AT

10:56:44 16 SOME POINT, I MEAN, SEVEN IS A LOT.

10:56:46 17 Q. WELL THAT'S KIND OF WHAT I'M GETTING TO, SIR, WHERE DO YOU

10:56:50 18 DRAW THE LINE?

10:56:50 19 A. I THINK I TRIED TO BE CLEAR ON THIS POINT. I DON'T HAVE A

10:56:53 20 SPECIFIC LINE, BUT I THINK THE JURY CAN MAKE THIS

10:56:56 21 DETERMINATION, THEY'VE GOT THESE NUMBERS TOO.

10:56:58 22 Q. SO YOU ARE NOT OFFERING AN OPINION ON THAT AT ALL; RIGHT?

10:57:01 23 A. I'M SAYING THAT I THINK THE EVIDENCE POINTS TO WIDESPREAD

10:57:04 24 USE, I'M NOT SAYING THERE'S A BRIGHT LINE WHERE ABOVE THAT IS

10:57:09 25 AND BELOW THAT ISN'T.

11:19:40 1 THE COURT: AND IT WILL BE ADMITTED.

11:19:42 2 (DEFENDANT'S EXHIBIT 5119 WAS ADMITTED INTO EVIDENCE.)

11:19:42 3 MR. VAN NEST: TX 5119.

11:19:47 4 THE NEXT DEPOSITION IS A LITTLE BIT LONGER. THIS IS THE  
11:19:53 5 DEPOSITION OF DOUG GOURLAY. IT'S A LITTLE LONGER, IT'S  
11:19:56 6 29 MINUTES.

11:19:57 7 18 MINUTES OF THAT SHOULD BE ASSESSED TO ARISTA AND  
11:20:00 8 11 MINUTES TO CISCO.

11:20:15 9 **(THE VIDEO DEPOSITION OF DOUGLAS GOURLAY WAS PLAYED INTO**  
11:50:01 10 **THE RECORD.)**

11:50:01 11 MR. VAN NEST: YOUR HONOR, THAT CONCLUDES  
11:50:03 12 MR. GOURLAY'S DEPOSITION.

11:50:05 13 I HAVE A 15-MINUTE -- ONE LAST VIDEO THIS MORNING, OR I  
11:50:10 14 HAVE A FIVE-MINUTE READING OF AN INTERROGATORY. AND I COULD DO  
11:50:14 15 EITHER ONE, WHATEVER YOUR HONOR --

11:50:16 16 THE COURT: I AM THINKING WE WILL PUSH THROUGH AND DO  
11:50:19 17 THE 15-MINUTE TAPE, SINCE WE ARE DOING THOSE.

11:50:23 18 MR. PAK: WE MAY HAVE SOME EXHIBITS TO MOVE IN, BASED  
11:50:26 19 ON MR. GOURLAY'S VIDEO TESTIMONY.

11:50:29 20 MR. VAN NEST: LET'S PASS THAT.

11:50:30 21 MY SHEET SAID THERE WEREN'T ANY, BUT IF YOU WANT TO MOVE  
11:50:35 22 THEM IN, YOU CAN. WE WILL CONFER OVER THE LUNCH HOUR.

11:50:43 23 THIS NEXT WITNESS IS DEEPAK MALIK. THIS IS A -- JUST  
11:50:49 24 OVER -- IT'S ABOUT A 15-MINUTE SEGMENT, YOUR HONOR.

11:50:51 25 TEN MINUTES SHOULD BE ATTRIBUTED TO ARISTA, AND FIVE TO

01:31:52 1 IS THAT ARISTA EXPLAINED, AS EARLY AS 2008, THAT IT HAD AN  
01:31:58 2 INDUSTRY STANDARD CLI; RIGHT?

01:32:00 3 A. ARE WE STILL ON PAGE 49?

01:32:02 4 Q. I AM.

01:32:03 5 A. I DON'T SEE --

01:32:06 6 Q. UNDER THE HEADING, "BETA CODE RELEASE 2007.1?"

01:32:11 7 A. OH, THE FIRST BULLET, YES. YES, I READ THAT.

01:32:16 8 Q. SO THAT'S IN THEIR VERY FIRST RELEASE, VERY FIRST BULLET,  
01:32:21 9 ARISTA ANNOUNCED PUBLICLY THAT IT HAS AN INDUSTRY STANDARD CLI;  
01:32:25 10 RIGHT?

01:32:25 11 A. YES.

01:32:26 12 Q. AND YOU KNEW WHAT THAT MEANT BECAUSE CISCO HAD BEEN USING  
01:32:31 13 THE SAME LANGUAGE TO DESCRIBE ITS OWN CLI IN THAT TIMEFRAME?

01:32:37 14 A. WELL, CISCO HAS BEEN USING THAT BECAUSE IT'S MORE OF A --  
01:32:42 15 IT'S BECOME MORE OF A DE FACTO, GIVEN THE NUMBER OF SWITCHES  
01:32:46 16 AND ROUTERS CISCO HAS BEEN SELLING SINCE INCEPTION, SINCE THE,  
01:32:50 17 YOU KNOW, SINCE THE EARLY 90'S.

01:32:53 18 SO THEN, IT'S BECOME LIKE THE GOLD STANDARD. BUT WHEN I  
01:32:57 19 LOOK AT THE WORDS "INDUSTRY STANDARD," THEY REMIND ME OF GROUPS  
01:33:01 20 LIKE IEEE AND IETF, THESE ARE INDUSTRY STANDARD STANDARDS  
01:33:05 21 BODIES THAT DEFINE THE LANGUAGE THAT GETS SPOKEN OVER THE  
01:33:08 22 INTERNET, THE PROTOCOLS.

01:33:11 23 BUT WHEN I USE -- WHEN I THINK ABOUT THE WORD  
01:33:13 24 "COMMAND-LINE INTERFACE," AS A CISCO -- AS AN EX-CISCO PERSON  
01:33:17 25 NOW, "COMMAND-LINE INTERFACE" IS NOT DEFINED AT EITHER THE IEEE



02:09:19 1 OPPORTUNITIES THAT CISCO HAD TO COMPETE IN THE MARKETPLACE?

02:09:22 2 A. WELL, I THINK CISCO HAS HAD THE OPPORTUNITY TO COMPETE,  
02:09:29 3 AND WELCOMES COMPETITION, WHICH HAS BEEN A VERY IMPORTANT PART  
02:09:34 4 OF GETTING US TO BE A BETTER COMPANY TO DRIVE MORE OPTIONS FOR  
02:09:38 5 CUSTOMERS.

02:09:38 6 BUT THAT IS ASSUMING THE COMPETITION CAN COMPETE ON A FAIR  
02:09:42 7 GROUND.

02:09:43 8 BY COPYING THE COMMAND-LINE INTERFACE, THE COMPETITION  
02:09:46 9 FROM ARISTA HAS NOT BEEN FAIR BECAUSE A BIG PART OF OUR  
02:09:50 10 DIFFERENTIATION IS OUR PROTOCOLS, LIKE BGP, AS WELL AS THE  
02:09:54 11 COMMAND-LINE INTERFACES, AND THE COMPREHENSIVE NATURE AND THE  
02:09:58 12 MATURITY WITH WHICH WE HELP OUR CUSTOMERS BUILD SOME OF THE  
02:10:02 13 LARGEST NETWORKS.

02:10:03 14 AND TAKING THAT INTELLECTUAL PROPERTY AND COPYING IT AND  
02:10:07 15 USING IT WITHIN THEIR PRODUCTS, HAS HURT CISCO. IT HAS HURT  
02:10:12 16 CISCO IN TERMS OF MARKET SHARE, IT HAS HURT CISCO IN TERMS OF  
02:10:15 17 ITS ENGAGEMENT WITH CUSTOMERS, AND IT HAS ALSO HURT CISCO IN  
02:10:19 18 TERMS OF OVER ALL MARGINS AND OVER ALL PROFITS.

02:10:25 19 SO THE NATURE OF THIS ENGAGEMENT, WHICH I FIND VERY  
02:10:32 20 AWKWARD, IS I THINK COMPETITION IS HEALTHY, IT'S VERY IMPORTANT  
02:10:35 21 TO KEEP ALL COMPANIES AT BAY, BUT IT SHOULD BE FAIR. AND IN  
02:10:41 22 THIS CASE, IT HAS NOT BEEN FAIR.

02:10:43 23 Q. AND HAVE YOU HEARD ANY OF YOUR OTHER COMPETITORS DURING  
02:10:46 24 YOUR TENURE AT CISCO, CLAIM THAT THEY HAVE COPIED CISCO'S IOS  
02:10:52 25 CLI TO THE POINT WHERE YOU CAN DROP-IN REPLACE THEIR PRODUCTS

02:10:56 1 AND CONFIGURE THEM IN EXACTLY THE SAME WAY AS CISCO'S PRODUCTS?

02:11:00 2 A. THERE'S NO SINGLE COMPETITOR IN EITHER THE ROUTING

02:11:03 3 BUSINESS, LIKE A VENDOR LIKE JUNIPER, OR ANY OTHER LEADING

02:11:09 4 SWITCHING VENDOR THAT HAS EVER MADE THOSE CLAIMS.

02:11:12 5 Q. OTHER THAN ARISTA?

02:11:13 6 A. OTHER THAN ARISTA, IN MY 22 YEARS IN THIS INDUSTRY.

02:11:16 7 MR. PAK: THANK YOU.

02:11:17 8 I THANK YOU FOR YOUR TESTIMONY.

02:11:18 9 THE COURT: MR. FERRALL, ANYTHING ELSE?

02:11:21 10 MR. FERRALL: NOTHING ELSE, YOUR HONOR.

02:11:22 11 THE COURT: MS. JIANDANI, THANK YOU FOR YOUR

02:11:24 12 TESTIMONY.

02:11:38 13 MR. VAN NEST: YOUR HONOR, AT THIS TIME I WOULD LIKE

02:11:40 14 TO READ AN INTERROGATORY ANSWER.

02:11:41 15 I THINK YOUR HONOR EXPLAINED TO JURORS EARLIER ABOUT

02:11:44 16 INTERROGATORIES. ALL I PLAN TO DO IS READ THE QUESTION AND

02:11:48 17 THEN THE ANSWER AND THEN OFFER IT IN EVIDENCE.

02:11:51 18 THE COURT: OKAY.

02:11:51 19 MR. VAN NEST: THIS IS AN INTERROGATORY WHICH WAS

02:11:53 20 SENT BY ARISTA TO CISCO.

02:11:58 21 AND THE QUESTION POSED WAS: "FOR EACH ARISTA DEVICE IN

02:12:02 22 YOUR POSSESSION, DESCRIBE CISCO'S ACQUISITION AND USE OF THE

02:12:07 23 DEVICE, INCLUDING BUT NOT LIMITED TO, FROM WHOM CISCO ACQUIRED

02:12:11 24 THE DEVICE, WHEN CISCO ACQUIRED THE DEVICE, THE REASON OR

02:12:15 25 PURPOSES FOR CISCO ACQUIRING THE DEVICE, WHO HAS ACCESS TO THE

02:36:29 1 DIFFERENCES BETWEEN THE COMMANDS, YOU CAN USE THIS GUIDE AS A  
02:36:32 2 WAY TO TRANSLATE FROM ONE CLI COMMAND SET TO ANOTHER, CORRECT?  
02:36:36 3 A. CORRECT.  
02:36:37 4 Q. AND THEN IT ALSO PROVIDES A DETAILED DESCRIPTION WHERE IT  
02:36:41 5 SAYS, BENEATH THE SIDE-BY-SIDE COMPARISON, THIS GUIDE PROVIDES  
02:36:45 6 A MORE IN-DEPTH COMPARISON DISPLAYING THE OUTPUT OF THE COMMAND  
02:36:50 7 AND OPTIONS.  
02:36:50 8 DO YOU SEE THAT AS WELL?  
02:36:52 9 A. YES.  
02:36:53 10 Q. NOW IF WE GO DOWN TO, SCROLL DOWN A LITTLE BIT. COMWARE  
02:36:59 11 DIFFERENCES.  
02:37:00 12 "IF YOU ARE FAMILIAR WITH EITHER THE HP PROVISION CLI OR  
02:37:04 13 THE CISCO IOS CLI, YOU WILL NOTICE THAT COMWARE CLI'S IS  
02:37:11 14 ORGANIZED SLIGHTLY DIFFERENTLY."  
02:37:12 15 DO YOU SEE THAT?  
02:37:13 16 A. YES.  
02:37:14 17 Q. AND IT SAYS, "COMWARE WAS DESIGNED FOR INTERNET SERVICE  
02:37:17 18 PROVIDERS, ISP'S?"  
02:37:19 19 A. YES.  
02:37:20 20 Q. AND MANY FEATURES AND FUNCTIONS, SUCH AS SECURITY AND  
02:37:25 21 QUALITY OF SERVICE ARE MULTI-TIERED TO SUPPORT THE DIFFERENT  
02:37:28 22 NEEDS OF MULTIPLE ENTITIES ACCESSING THE SAME SWITCH.  
02:37:33 23 DO YOU SEE THAT?  
02:37:33 24 A. YES.  
02:37:34 25 Q. AND YOU HAVE NO REASON TO DISPUTE THOSE PUBLIC STATEMENTS

02:37:38 1

BY HP?

02:37:38 2

A. NO.

02:37:39 3

Q. AND IF WE GO TO NAVIGATION DIFFERENCES AMONG CLI'S,

02:37:43 4

THERE'S SOME DESCRIPTIONS THERE, BUT IT ALSO DESCRIBES SOME OF

02:37:49 5

THE SIMILARITIES BUT ALSO SOME OF THE DIFFERENCES BETWEEN THE

02:37:51 6

COMWARE CLI VERSUS THE CISCO CLI.

02:37:55 7

DO YOU SEE THAT?

02:37:57 8

A. YES.

02:38:00 9

Q. AND THEN IF YOU FURTHER SCROLL, MR. FISHER, TO

02:38:03 10

CONFIGURATION DIFFERENCES.

02:38:05 11

AGAIN, THERE ARE DESCRIPTIONS BEING PROVIDED ON SOME OF

02:38:10 12

THE SIMILARITIES, BUT ALSO DIFFERENCES AMONG THE PROVISION

02:38:13 13

COMWARE AND CISCO CLI'S, CORRECT?

02:38:16 14

A. YES.

02:38:16 15

Q. AND NOW LET'S LOOK AT SOME OF THE ACTUAL SPECIFIC MODES

02:38:27 16

AND PROMPTS. IF YOU COULD TURN TO PAGE 12.

02:38:29 17

YOU UNDERSTAND WHAT MODES AND PROMPTS ARE, CORRECT, IN THE

02:38:31 18

CLI'S?

02:38:32 19

A. YES.

02:38:33 20

Q. SO WE HAVE THREE COLUMNS, PROVISION, IN LIGHT BLUE TO THE

02:38:37 21

LEFT, COMWARE IS THE MIDDLE COLUMN, AND CISCO TO THE RIGHT; DO

02:38:41 22

YOU SEE THAT?

02:38:41 23

A. YES.

02:38:41 24

Q. JUST TO REMIND THE JURY, PROVISION AND COMWARE ARE HP

02:38:44 25

PRODUCTS, CORRECT?

02:38:45 1 A. CORRECT.

02:38:46 2 Q. AND SO IF YOU LOOK, YOU CAN SEE THAT THE COMWARE HAS A

02:38:52 3 SYSTEM VIEW MODE, APPARENTLY, BUT DOES NOT HAVE A PRIVILEGED

02:38:56 4 EXEC MODE; IS THAT CORRECT?

02:38:58 5 A. CORRECT.

02:38:58 6 Q. OKAY. AND YOU DON'T HAVE ANY REASON TO DISPUTE THAT,

02:39:02 7 SITTING HERE TODAY?

02:39:02 8 A. NO.

02:39:03 9 Q. AND THEN IF YOU LOOK AT THE PROMPTS, YOU CAN SEE THAT THE

02:39:06 10 PROMPTS LOOK VERY DIFFERENTLY COMPARED TO THE CISCO PROMPTS.

02:39:09 11 FOR EXAMPLE THERE'S NO HASH TAG OR A PARENTHETICAL WITH CONFIG

02:39:14 12 IN THE COMWARE PROMPTS; IS THAT CORRECT?

02:39:17 13 A. CORRECT.

02:39:17 14 Q. AND YOU HAVE NO REASON TO DISPUTE THAT EITHER?

02:39:21 15 A. NO.

02:39:22 16 Q. LET'S LOOK AT SOME OF THE COMMANDS, COMPARING FREQUENTLY

02:39:25 17 USED COMMANDS, THERE'S A TABLE THERE.

02:39:30 18 AND SO I TAKE IT THAT HP, IN THIS DOCUMENT, HAS SUMMARIZED

02:39:34 19 SOME OF THE MOST OR COMMONLY USED COMMANDS FOR EACH OF THE

02:39:37 20 CLI'S, CORRECT?

02:39:38 21 A. CORRECT.

02:39:38 22 Q. SO IF WE LOOK AT PROVISION, IT HAS ENABLE, BUT COMWARE FOR

02:39:43 23 THE SAME FUNCTIONALITY USES THE COMMAND SYSTEM VIEW, CORRECT?

02:39:47 24 A. CORRECT.

02:39:48 25 Q. SYSTEM-VIEW, CORRECT?

02:39:51 1 A. CORRECT.

02:39:51 2 Q. AND SO THERE ARE TWO DIFFERENT COMMANDS FROM THE SAME

02:39:54 3 COMPANY, HP, FOR THE SAME FUNCTIONALITY, CORRECT?

02:39:57 4 A. CORRECT.

02:39:57 5 Q. AND EARLIER TODAY YOU TALKED ABOUT PRO CURVE, BUT YOU

02:40:01 6 DIDN'T TALK ABOUT COMWARE, CORRECT, WHEN YOU WERE ASKED BY

02:40:05 7 COUNSEL FOR ARISTA?

02:40:06 8 A. YES.

02:40:06 9 Q. OKAY. SO LET'S LOOK AT A FEW MORE OF THESE.

02:40:10 10 SHOW FLASH. DO YOU SEE THAT THAT IS NOW --

02:40:15 11 A. YES.

02:40:15 12 Q. THE COMMAND DIR, IN COMWARE, CORRECT?

02:40:19 13 A. YES.

02:40:19 14 Q. AND WE CAN GO ON AND ON, SHOW VERSION, DISPLAY VERSION; DO

02:40:26 15 YOU SEE THAT?

02:40:27 16 A. YES.

02:40:27 17 Q. SHOW HISTORY, DISPLAY HISTORY; DO YOU SEE THAT?

02:40:31 18 A. YES.

02:40:31 19 Q. ANOTHER DIFFERENCE. ERASE START. RESET SAVED.

02:40:36 20 DO YOU SEE THAT?

02:40:37 21 A. YEP.

02:40:39 22 Q. RELOAD, REBOOT, IS ANOTHER DIFFERENCE.

02:40:43 23 A. YES.

02:40:44 24 Q. WRITE MEMORY, SAVE.

02:40:47 25 A. YES.

02:40:48 1 Q. SHOW TECH, DISPLAY DIAGNOSTIC INFORMATION?

02:40:53 2 A. YES.

02:40:55 3 Q. ISN'T IT TRUE, SIR, THAT DIFFERENT ENGINEERS, EVEN IN THE  
02:40:58 4 SAME COMPANY, CAN MAKE THEIR OWN CHOICES ABOUT HOW TO CREATE  
02:41:05 5 THEIR OWN CLI COMMANDS AND SYNTAX FOR THE SAME FUNCTIONALITY,  
02:41:08 6 AND WE CAN SEE IT IN THESE TWO PRODUCT LINES FROM HP, CORRECT?

02:41:13 7 A. THE DESIGNERS OF THE CLI HAVE SOME COMMON DESIGN  
02:41:21 8 PRINCIPLES THAT THEY USE TO STRUCTURE THE CLI WITH VARIATIONS  
02:41:30 9 IN SYNTAX.

02:41:30 10 AND SO THEY TRY TO STAY CONSISTENT IN THE USAGE OF  
02:41:34 11 TERMINOLOGY IN THE CONSTRUCTION OF CLI, AND DIFFERENT  
02:41:40 12 COMPANIES, DIFFERENT DESIGNERS DEVELOP THE CLI DIFFERENTLY,  
02:41:45 13 NAME THE COMMANDS DIFFERENTLY. IN THIS CASE, COMWARE WAS  
02:41:48 14 ACQUIRED BY HP, AND DIFFERENT DESIGN GROUPS DESIGN THOSE  
02:41:54 15 SYNTAX.

02:41:54 16 Q. AND HP SELLS COMWARE PRODUCTS TODAY, CORRECT?

02:41:58 17 A. THAT'S RIGHT.

02:41:59 18 Q. SO WHAT I'M GETTING AT IS, ALTHOUGH SOME OF THE TERMS  
02:42:02 19 MIGHT BE THE SAME, DIFFERENT DESIGNERS, EVEN AT THE SAME  
02:42:06 20 COMPANY, CAN CHOOSE DIFFERENT WORDS, DIFFERENT HIERARCHIES,  
02:42:09 21 DIFFERENT SYNTAX FOR THE SAME FUNCTIONS; ISN'T THAT TRUE, SIR?

02:42:12 22 A. THAT'S TRUE.

02:42:13 23 Q. OKAY.

02:42:14 24 MR. PAK: I HAVE NO MORE QUESTIONS, YOUR HONOR.

02:42:17 25 THE COURT: REDIRECT, MS. MCCLOSKEY?

**REDIRECT EXAMINATION**

BY MS. MCCLOSKEY:

Q. IF WE COULD STICK WITH THAT SAME PAGE ON 6380.

MR. VENKATRAMAN, YOU WERE JUST LOOKING AT THIS PAGE,  
PAGE 12 OF THE MANUAL IN FRONT OF YOU.

AND DO YOU SEE THAT MANY OF THE COMMANDS, IF NOT ALL OF  
THEM BETWEEN THE PROVISION, THE HP PROVISION AND THE CISCO,  
MANY OF THOSE COMMANDS ON THE RIGHT SIDE AND THE LEFT SIDE OF  
THIS COLUMN ARE SIMILAR, IF NOT IDENTICAL?

A. CORRECT.

Q. WOULD YOU BE SURPRISED TO LEARN THAT THE HP PROVISION ON  
THE LEFT SIDE THERE, HAS HUNDREDS OF OVERLAPPING COMMANDS WITH  
CISCO COMMANDS?

A. NO, MOST VENDORS HAVE OVERLAPPING COMMAND NAME AND SYNTAX.

Q. YOU UNDERSTAND, MR. VENKATRAMAN, THAT THERE'S CERTAIN CLI  
COMMANDS ASSERTED IN THIS CASE BETWEEN CISCO AND ARISTA?

A. COULD BE.

Q. OKAY. AND OF THE APPROXIMATELY 500 DISPUTED COMMANDS,  
WOULD IT SURPRISE YOU TO LEARN THAT HUNDREDS OF THOSE ARE USED  
BY MULTIPLE VENDORS IN THE INDUSTRY?

A. NO.

Q. YOU TESTIFIED ABOUT A COMMON SET OF STANDARD COMMANDS.  
WHAT DID YOU MEAN BY A COMMON SET OF STANDARD COMMANDS?

A. SO SOME COMMANDS LIKE "SHOW," "SHOW CONFIGURATION," IN  
SOME VENDORS, MAY BE "SHOW," OTHERS MAY BE "VIEW," "SAVE"



02:44:14 1 VERSUS "WRITE."

02:44:18 2 THE INTENDED BEHAVIOR BY THE ROUTERS AND SWITCHES ARE THE  
02:44:23 3 SAME. AND SO THOSE CLASS OF COMMANDS, THOSE CLASS OF INTENDED  
02:44:30 4 BEHAVIOR ON THE SWITCHES AND ROUTERS ARE THE SAME.

02:44:33 5 THE SYNTAX MAY VARY, BUT WHAT YOU EXPECT THE ROUTER AND  
02:44:37 6 THE SWITCH TO DO IS QUITE CONSISTENT.

02:44:41 7 Q. THANK YOU.

02:44:41 8 A. AND THOSE ARE THE COMMON THINGS.

02:44:43 9 MS. MCCLOSKEY: THANK YOU.

02:44:45 10 MR. PAK: NO MORE QUESTIONS, YOUR HONOR.

02:44:47 11 THE COURT: THANK YOU.

02:44:47 12 MR. VENKATRAMAN, YOU ARE FREE TO GO. THANK YOU FOR YOUR  
02:44:50 13 TESTIMONY.

02:44:51 14 THE WITNESS: THANK YOU.

02:44:57 15 MR. VAN NEST: YOUR HONOR, WE HAVE ONE MORE SHORT  
02:45:00 16 VIDEO WITNESS --

02:45:02 17 THE COURT: OKAY.

02:45:02 18 MR. VAN NEST: -- WHO IS GOING TO APPEAR.

02:45:04 19 HIS NAME GAVIN CATO, C-A-T-O. THIS IS A 16-MINUTE VIDEO,  
02:45:14 20 OF WHICH NINE MINUTES WILL BE ATTRIBUTED TO ARISTA AND SEVEN  
02:45:18 21 MINUTES TO CISCO.

02:45:18 22 **(THE VIDEO DEPOSITION OF GAVIN CATO WAS PLAYED INTO THE**  
03:03:10 23 **RECORD.)**

03:03:10 24 MR. VAN NEST: YOUR HONOR, THAT CONCLUDES THE  
03:03:11 25 TESTIMONY OF MR. CATO'S.

03:29:43 1

A. YEP.

03:29:44 2

Q. AND THERE WERE SOME INTERACTIONS BETWEEN ARISTA AND  
FACEBOOK BEFORE YOU JOINED; RIGHT?

03:29:47 3

03:29:49 4

A. CORRECT.

03:29:49 5

Q. AND YOU WOULDN'T HAVE PERSONAL KNOWLEDGE OF THOSE  
INTERACTIONS; RIGHT?

03:29:51 6

03:29:52 7

A. NO.

03:29:52 8

Q. OKAY. SO LET'S TALK ABOUT WHEN ARISTA -- EXCUSE ME,  
FACEBOOK, BECAME A CUSTOMER AT ARISTA. THAT WAS AROUND  
DECEMBER 2011; RIGHT?

03:29:58 9

03:30:03 10

A. CORRECT.

03:30:04 11

03:30:04 12

Q. AND ONE OF THE VENDORS THAT FACEBOOK WAS USING AT THAT  
TIME IN DECEMBER 2011 WAS CISCO; RIGHT?

03:30:07 13

03:30:09 14

A. CORRECT.

03:30:10 15

Q. OKAY. NOW IN YOUR DIRECT TESTIMONY, YOU GAVE A LOT OF  
TESTIMONY ABOUT KIND OF AUTOMATION AND TOOLS; DO YOU REMEMBER  
THAT?

03:30:14 16

03:30:18 17

03:30:18 18

A. UH-HUH.

03:30:18 19

Q. I JUST WANT TO KIND OF ORIENT WHAT WE ARE TALKING ABOUT  
HERE. THESE SCRIPTS THAT WE WERE TALKING ABOUT, THOSE USE CLI  
COMMANDS, RIGHT?

03:30:21 20

03:30:29 21

A. IN PART, THEY DO, YES.

03:30:29 22

03:30:30 23

Q. SO WHEN YOU ARE USING THE SCRIPTS, YOU ARE USING THE CLI,  
RIGHT?

03:30:33 24

03:30:33 25

A. IN PART, YES.

04:46:53 1 Q. SO HOW DOES ALL OF THIS TRANSLATE INTO A PORTION OF ARISTA  
04:46:59 2 PROFITS TO ALLOCATE TO THE ALLEGEDLY INFRINGING CLI FOR THIS  
04:47:04 3 GROUP OF NON-HIGHLY AUTOMATED CUSTOMERS HIGHLY?

04:47:11 4 A. SO AGAIN, NON-HIGHLY AUTOMATED CUSTOMERS. THE BLUE SLICE  
04:47:16 5 IS HARDWARE, 36 PERCENT OF THE PROFITS WE ESTIMATE ARE  
04:47:22 6 ATTRIBUTABLE TO THE HARDWARE. ORANGE SLICE, NON-CLI SOFTWARE.  
04:47:26 7 THAT'S 56 PERCENT OF THE TOTAL PROFIT PIE THAT'S ALLOCATED TO  
04:47:31 8 THE SOFTWARE OTHER THAN THE CLI PIECE.

04:47:35 9 THEN THE GREEN SLICE IS WHAT'S ALLOCATED TO THE CLI  
04:47:40 10 SOFTWARE, EIGHT PERCENT OF THE TOTAL.

04:47:41 11 NOW I HAVE TO SAY, I THINK YOUR QUESTION SAID HOW WE  
04:47:45 12 ALLOCATED TO THE ALLEGED INFRINGING, WE CAN'T GO ANY FURTHER  
04:47:53 13 DOWN IN THIS, THIS IS AN ALLOCATION TO THE ENTIRE CLI. THERE  
04:47:59 14 SIMPLY AREN'T RELIABLE DOCUMENTS THAT CAN BE USED TO ESTIMATE  
04:48:02 15 JUST THE INFRINGING PORTION.

04:48:07 16 SO I STOPPED AT THE CLI.

04:48:09 17 Q. AND JUST TO BE CLEAR, WHICH WAY, IN WHOSE FAVOR DOES  
04:48:15 18 STOPPING AT THE ENTIRE CLI CUT, VERSUS TRYING TO GO FURTHER  
04:48:19 19 INTO JUST CERTAIN INFRINGING PORTIONS OF THE CLI?

04:48:22 20 A. THAT'S IN CISCO'S FAVOR, BECAUSE IT'S ESSENTIALLY GIVING  
04:48:27 21 THEM CREDIT, IF YOU WILL, OR GIVING THEM AN AWARD BASED ON THE  
04:48:34 22 WHOLE CLI AND NOT JUST THE INFRINGING PART OF IT.

04:48:40 23 I JUST DON'T HAVE THE DATA I NEED TO TAKE IT ALL THE WAY  
04:48:43 24 DOWN TO JUST THE INFRINGING PART.

04:48:45 25 Q. OKAY. AND DO YOU THEN HAVE A CALCULATION OF HOW YOU

04:48:50 1 APPORTIONED ARISTA'S SWITCH PROFITS TO THE CLI?

04:48:55 2 A. YES.

04:48:57 3 SO UNDER THE "HIGHLY AUTOMATED" COLUMN THERE, WE START  
04:49:04 4 WITH THE SALES -- OR I'M SORRY, WE START WITH THE SWITCH  
04:49:09 5 PROFITS, AS WE TALKED ABOUT, 0.6 PERCENT, SO ABOUT HALF OF A  
04:49:14 6 PERCENT, THE SWITCH PROFITS ARE ALLOCATED TO THE CLI, THAT'S  
04:49:19 7 \$1.1 MILLION.

04:49:23 8 FOR OTHER CUSTOMERS, THE NON-HIGHLY AUTOMATED CUSTOMERS, A  
04:49:29 9 LITTLE BIT OF A MIXED NUMBER BECAUSE A LOT OF THOSE ARE  
04:49:30 10 PARTIALLY, AND SOMETIMES THEY ARE NOT TOTALLY AUTOMATED  
04:49:34 11 CUSTOMERS, WE ATTRIBUTED 8 PERCENT OF THE SWITCH PROFIT TO THE  
04:49:38 12 CLI. THAT'S \$15.3 MILLION, SO THE TOTAL FOR BOTH GROUPS  
04:49:44 13 TOGETHER WOULD BE \$16.3 MILLION.

04:49:47 14 Q. AND THAT FIGURE THAT YOU JUST RECITED OF \$16.3 MILLION, IS  
04:49:51 15 THAT YOUR OPINION ON WHAT MAY BE A REASONABLE AWARD OF  
04:49:57 16 DISGORGEMENT DAMAGES TO CISCO IF THE JURY FINDS THAT CISCO HAS  
04:50:01 17 PROVEN INFRINGEMENT?

04:50:01 18 A. YES.

04:50:02 19 Q. OKAY.

04:50:04 20 I WOULD LIKE TO SWITCH TO A NEW TOPIC NOW, WHICH IS THE  
04:50:09 21 PATENT CASE.

04:50:11 22 AND DID YOU DETERMINE DAMAGES IN THE EVENT THAT THE JURY  
04:50:16 23 FINDS INFRINGEMENT OF THE '526 PATENT.

04:50:22 24 A. I DID.

04:50:22 25 Q. AND UNDER WHAT STANDARD DID YOU EVALUATE DAMAGES RELATIVE

08:21:46

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) DECEMBER 9, 2016  
)  
ARISTA NETWORKS, INC., ) VOLUME 12  
)  
DEFENDANT ) PAGES 2418-2655  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: DAVID A. NELSON  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

10:23:59 1 IF YOU LOOK AT OUR DATA CENTER FROM MICROSOFT OR FACEBOOK,  
10:24:04 2 EACH FACILITY IS THE SIZE OF FOUR FOOTBALL FIELDS. NO HUMAN  
10:24:08 3 BEING CAN PHYSICALLY GO AND CAN CONFIGURE ITS DEVICE, IT HAS TO  
10:24:13 4 BE AUTOMATED.

10:24:14 5 BUT AS THESE CLOUD COMPANIES PUBLISHED THEIR WORK ON  
10:24:17 6 INTERNET, ON CONFERENCES AND ON VIDEOS, NEWS SPREAD QUICKLY.

10:24:20 7 SO MANY MORE COMPANIES, TODAY, WANT TO AUTOMATE THEIR  
10:24:24 8 INFRASTRUCTURES. AND THERE'S A TREND IN NETWORKING, THERE'S  
10:24:27 9 BEEN A DRAMATIC CHANGE SINCE WE STARTED OUT, WHERE MORE  
10:24:31 10 COMPANIES ARE AUTOMATING SOFTWARE-DEFINED NETWORKING TO CHANGE  
10:24:34 11 THE WAY THEY OPERATE OR MANAGE THE NETWORK.

10:24:36 12 Q. DOES ARISTA STILL INTERACT WITH CUSTOMERS OR POTENTIAL  
10:24:41 13 CUSTOMERS WHO SEEK A CISCO-LIKE CLI?

10:24:44 14 A. THERE ARE A FEW IN THE ENTERPRISE SPACE, EVEN TODAY.

10:24:48 15 Q. NOW IN 2009, THERE WAS A STUDY DONE BY MR. DAVE HEYMAN AT  
10:25:00 16 ARISTA REGARDING USABILITY; ARE YOU FAMILIAR WITH THAT?

10:25:03 17 A. YES, I AM.

10:25:04 18 Q. AND WHAT WAS THE PURPOSE OF THAT STUDY?

10:25:09 19 A. THAT STUDY WAS DONE TO EDUCATE OUR SALES TEAM AND  
10:25:15 20 CUSTOMERS THAT TRANSITIONING TO ARISTA PRODUCTS WAS NOT GOING  
10:25:18 21 TO BE TOO HARD, THAT WAS GENERALLY A WAY CUSTOMERS WOULD HAVE  
10:25:23 22 IF THEY WERE LOOKING AT NEW EQUIPMENT.

10:25:26 23 AND THAT USABILITY STUDY WAS DONE TO SHOW THAT IT IS  
10:25:28 24 POSSIBLE, IT'S FAIRLY EASY FOR THEM TO TRANSITION TO THE ARISTA  
10:25:32 25 PRODUCT.

10:53:58 1 Q. IT IS PAGE 248. LINES 1 TO 5. ARE YOU THERE, SIR?

10:54:11 2 A. YES.

10:54:11 3 Q. AND MAY I PLAY THE CLIP, YOUR HONOR?

10:54:14 4 THE COURT: YOU MAY.

10:54:15 5 (THE VIDEO DEPOSITION OF ANSHUL SEDANA WAS PLAYED INTO THE  
10:54:16 6 RECORD.)

10:54:16 7 BY MR. NELSON:

10:54:31 8 Q. OKAY. SO THAT'S A TRUE STATEMENT; RIGHT, SIR?

10:54:37 9 A. THAT'S A TRUE STATEMENT.

10:54:38 10 Q. AND NOW SITTING HERE TODAY, DO YOU BELIEVE THAT IT'S  
10:54:46 11 DESIRABLE FOR ARISTA TO HAVE THE FLEXIBILITY TO REDO COMMANDS,  
10:54:50 12 IF NECESSARY, FROM THE COMMANDS THAT ARE IMPLEMENTED TO CISCO'S  
10:54:53 13 CLI?

10:54:54 14 A. AS I MENTIONED IN MY DEPOSITION, FOR THE BASE FEATURES,  
10:55:00 15 NO, BECAUSE IT'S USED BY ALL THE CUSTOMERS ACROSS THE WORLD,  
10:55:03 16 INCLUDING ENTERPRISES.

10:55:05 17 FOR OTHER FEATURES, YES.

10:55:06 18 Q. OKAY. SO FOR THE BASE FEATURES, I THINK YOU CALLED THEM  
10:55:10 19 "CORE FEATURES" LAST TIME AROUND?

10:55:11 20 A. SURE.

10:55:12 21 Q. NO FLEXIBILITY TO DEVIATE FROM THE CISCO CLI, EVEN TODAY;  
10:55:15 22 RIGHT?

10:55:15 23 A. BECAUSE WE STILL WANT TO WIN THE ENTERPRISE CUSTOMERS AND  
10:55:18 24 THAT'S THE CLI THEY ARE FAMILIAR WITH.

10:55:21 25 Q. OKAY. SO NOW YOU TALKED A BIT ABOUT MICROSOFT AND SOME OF

**REDIRECT EXAMINATION**

BY MR. FERRALL:

Q. ONE QUESTION MR. SADANA.

CAN YOU EXPLAIN TO THE JURY WHAT THE IMPLICATIONS FOR YOUR CUSTOMERS WOULD BE IF ARISTA WERE TO CHANGE ITS CLI NOW AFTER BEING ON THE MARKET FOR EIGHT YEARS?

A. THIS WOULD BE A HUGE PAIN FOR THE CUSTOMERS, BECAUSE THEY HAVE SPEND THE TIME INCLUDING OUR PRODUCTS INTO THE NETWORK AND THEY HAVE LEARNED HOW TO CONFIGURE IT, THEY'VE WRITTEN SCRIPTS ON HOW TO CONFIGURE THESE SWITCHES. AND NOW IF WE MAKE A CHANGE, THEIR ENGINEERING TEAMS WILL NOW HAVE THE BURDEN TO MAKE CHANGES TO THE NETWORK WHICH DOESN'T CHANGE THE FUNCTIONALITY OF THE NETWORK, IT'S THE SAME NUMBER OF SERVERS TALKING WITH EACH OTHER OVER THE SAME PROTOCOLS, BUT THEY WILL HAVE TO GO THROUGH THE PAIN OF CHANGING THE CLI.

Q. I LIED. I HAVE TWO QUESTIONS.

DID CISCO EVER TELL YOU TO CHANGE ITS CLI BEFORE THIS LAWSUIT WAS FILED?

A. NO, THERE WAS NO COMMENT OR DISCUSSION WITH CISCO AT THE TIME TO CHANGE OUR CLI.

MR. FERRALL: NOTHING FURTHER.

THANK YOU, YOUR HONOR.

THE COURT: MR. NELSON?

MR. NELSON: NOTHING FURTHER, YOUR HONOR.

THE COURT: OKAY. AND MR. SADANA, THANK YOU FOR YOUR



11:16:00 1 YOUR HONOR.

11:16:00 2 THE COURT: THANK YOU. IT WILL BE ADMITTED.

11:16:03 3 (PLAINTIFF'S EXHIBIT 183 WAS ADMITTED INTO EVIDENCE.)

11:16:03 4 BY MR. NELSON:

11:16:03 5 Q. SO IF WE MOVE DOWN THE PAGE A BIT THERE, YOU WILL SEE  
11:16:17 6 THERE THAT I THINK IT'S THE THIRD PARAGRAPH?

11:16:18 7 A. YES.

11:16:19 8 Q. IT SAYS, "DESPITE WHAT KEN MENTIONED IN THE BUG, I THINK  
11:16:22 9 THIS IS WHAT WE WANT TO IMPLEMENT. IT IS A STANDARD COMMAND  
11:16:26 10 ACROSS CISCO SWITCHES AND WE USUALLY TRY HARD NOT TO INNOVATE  
11:16:33 11 ON CLI COMMANDS WITHOUT GOOD REASON."

11:16:35 12 DO YOU SEE THAT?

11:16:36 13 A. YES, I DO.

11:16:37 14 Q. AND HOW DOES THAT AFFECT YOUR OPINION REGARDING  
11:16:40 15 TRANSFORMATION OF THE CLI?

11:16:41 16 A. WELL, IT'S SOME OF THE EVIDENCE THAT I RELIED ON THAT  
11:16:44 17 DEMONSTRATES THAT CONTRARY TO WHAT DR. BLACK TRIED TO OFFER AS  
11:16:48 18 AN OPINION, THAT SEVERAL OF THE ARISTA WITNESSES HAVE TESTIFIED  
11:16:52 19 THAT THEY WANTED THE CLI TO BE THE SAME AS CISCO'S. THEY  
11:16:57 20 DIDN'T WANT TO CHANGE IT. THEY DIDN'T WANT TO INNOVATE, THEY  
11:17:02 21 WANTED TO KEEP IT THE SAME FOR VERY SPECIFIC REASONS.

11:17:04 22 Q. NOW DID YOU SEE ANY OTHER EVIDENCE IN THE CASE THAT  
11:17:08 23 INDICATED THAT THE CLI, THE CISCO CLI WAS NOT TRANSFORMED IN  
11:17:13 24 THE ARISTA PRODUCT?

11:17:14 25 A. YES. THERE'S A LOT OF EVIDENCE.

11:17:16 1 Q. AND WHAT IS SOME OF THAT?

11:17:18 2 A. WELL, MR. DUDA TALKED ABOUT SLAVISHLY COPYING THE CLI.

11:17:24 3 MR. DALE ALSO TESTIFIED THAT THEY WANTED IT TO BE

11:17:28 4 99.999 PERCENT THE SAME.

11:17:33 5 THERE WAS EVIDENCE IN THE AT&T REPORT THAT I TALKED ABOUT

11:17:36 6 PREVIOUSLY WHERE YOU WANTED TO BE ABLE TO CUT AND PASTE THE

11:17:41 7 CONFIGURATION COMMANDS FROM CISCO DIRECTLY INTO ARISTA SO THAT

11:17:46 8 IT WOULD STILL BE ABLE TO OPERATE WITHOUT HAVING TO MAKE ANY

11:17:50 9 CHANGES.

11:17:50 10 REALLY, THE WHOLE GOAL WAS NOT TO MAKE ANY CHANGES TO THE

11:17:54 11 CLI SO THAT YOU COULD USE AN ARISTA SWITCH WITHOUT HAVING TO

11:17:59 12 RECEIVE ADDITIONAL TRAINING.

11:18:00 13 Q. AND HOW IS IT THAT CUT AND PASTING THE CONFIGURATION FILES

11:18:05 14 FROM A CISCO SWITCH TO AN ARISTA SWITCH AFFECTS THAT

11:18:09 15 TRANSFORMATION OPINION?

11:18:11 16 A. WELL, IF YOU WANT TO TAKE THE SAME COMMANDS THAT ARE

11:18:15 17 ENTERED VIA A CISCO CLI AND CUT AND PASTE THEM AND RUN THEM ON

11:18:22 18 AN ARISTA SWITCH, YOU ARE NOT CHANGING THEM.

11:18:24 19 SO THE FACT THAT YOU CAN DO THAT, THAT YOU CAN USE THE

11:18:27 20 SAME CONFIGURATION MEANS YOU HAVEN'T TRANSFORMED THE CLI, IT'S

11:18:30 21 THE SAME COMMANDS FROM ONE CLI TO THE OTHER. THERE'S NO

11:18:34 22 TRANSFORMATION THAT'S HAPPENING FROM CISCO'S CLI TO ARISTA'S

11:18:39 23 CLI.

11:18:39 24 Q. SO, SIR, I WANT TO TURN TO ANOTHER PART OF DR. BLACK'S

11:18:47 25 TESTIMONY.

11:18:47 1 AND IF YOU COULD LOOK AT EXHIBIT 9037 IN YOUR BINDER. AND  
11:19:02 2 WE CAN PULL THAT UP ON THE SCREEN, IT'S ALREADY BEEN ADMITTED  
11:19:06 3 INTO EVIDENCE.

11:19:06 4 A. OKAY.

11:19:07 5 Q. THAT MIGHT BE A LITTLE EASIER TO LOOK AT.

11:19:10 6 NOW CAN YOU WEE RY MIND US WHAT WE'RE LOOKING AT HERE.

11:19:13 7 A. THIS WAS AN EXHIBIT THAT DR. BLACK TESTIFIED ABOUT.

11:19:16 8 MR. VAN NEST: OBJECTION, YOUR HONOR.

11:19:17 9 THIS IS OUTSIDE THE SCOPE OF HIS REBUTTAL REPORT.

11:19:19 10 MR. NELSON: YOUR HONOR, WE COVERED THIS AT THE  
11:19:21 11 SIDEBAR LAST TIME IN HIS DEPOSITION. HE HAD TALKED ABOUT  
11:19:25 12 THE --

11:19:25 13 THE COURT: OVERRULED.

11:19:27 14 THE WITNESS: OKAY. SO THIS WAS AN EXHIBIT THAT  
11:19:29 15 DR. BLACK RELIED ON COMPARING THE CISCO COMMANDS WITH THE  
11:19:33 16 ARISTA COMMANDS, AND THEN HE ALSO HAD SOME ADDITIONAL  
11:19:39 17 DISCUSSION ABOUT THE PARAMETERS THAT CAN BE USED WITH THE  
11:19:41 18 COMMANDS.

11:19:42 19 Q. AND WHAT'S THE RELEVANCE OF THE PARAMETERS TO THE  
11:19:47 20 TRANSFORMATION OR LACK THEREOF IN THIS CASE?

11:19:50 21 A. WELL, THERE ISN'T ANY RELEVANCE. WHAT'S IMPORTANT HERE IS  
11:19:53 22 THE COMMAND ITSELF. AND THE FACT THAT YOU CAN HAVE A PARAMETER  
11:19:57 23 AFTER IT.

11:19:58 24 SO FOR EXAMPLE, IF YOU ARE CONFIGURING AN IP ADDRESS AND  
11:20:01 25 THERE'S A PARAMETER THAT SAYS THIS IS THE IP ADDRESS THAT I

11:20:05 1 WANT TO USE, OR THE NAME OF THE HOST THAT I WANT TO USE OR SOME  
11:20:09 2 DETAIL THAT'S BEING USED AS PART OF THE COMMAND, THOSE  
11:20:13 3 PARAMETERS DON'T AFFECT THE FACT THAT YOU STILL HAVE THE  
11:20:17 4 COMMAND.

11:20:17 5 IN FACT, IF YOU LOOK AT THIS EXHIBIT, IT HAS AAA  
11:20:22 6 ACCOUNTING UNDER THE CISCO COMMAND, AND IT HAS AAA ACCOUNTING  
11:20:26 7 UNDER THE ARISTA COMMAND.

11:20:27 8 Q. AND SO IF WE SCROLL DOWN, GO TO THE NEXT PAGE, THERE'S  
11:20:34 9 ANOTHER ONE WE SEE THERE, AAA AUTHENTICATION LOGIN AND THEN THE  
11:20:40 10 ARISTA COMMAND AAA AUTHENTICATION LOGIN; DO YOU SEE THAT?

11:20:44 11 A. YES.

11:20:44 12 Q. SO WHEN YOU REVIEWED THIS EXHIBIT 9037, WHAT DID THAT  
11:20:47 13 ACTUALLY TELL YOU ABOUT THE RELATIONSHIP BETWEEN THE CISCO CLI  
11:20:54 14 COMMANDS AND THE ARISTA CLI COMMANDS?

11:20:57 15 A. THAT THEY WERE THE SAME, THEY ARE THE SAME COMMANDS.

11:21:00 16 Q. AND IS THAT TRUE FOR ALL OF THE 506 COMMANDS?

11:21:05 17 A. IT IS.

11:21:08 18 Q. NOW -- AND WHEN YOU SAY THAT THE SAME COMMANDS, DOES THAT  
11:21:13 19 MEAN THEY ARE IDENTICAL?

11:21:14 20 A. THEY ARE IDENTICAL, THAT'S CORRECT. YOU CAN LOOK THROUGH  
11:21:18 21 THIS ENTIRE EXHIBIT AND YOU SEAL THOSE FIRST TWO COLUMNS PAGE  
11:21:22 22 AFTER PAGE AFTER PAGE WHERE THE COMMANDS ARE IDENTICAL.

11:21:25 23 Q. NOW I WOULD LIKE TO GO TO EXHIBIT 5, WHICH IS ALREADY IN  
11:21:33 24 EVIDENCE.

11:21:34 25 MR. NELSON: AND IF WE CAN GO TO THE BATES NUMBER

11:21:38 1 PAGE, MR. FISHER, IS 8994. IT'S THE ARISTA MANUAL. CAN WE GO  
11:22:22 2 TO THE PAGE BATES NUMBERED, THE LAST FOUR ARE 8994.

11:22:38 3 WE CAN GO TO THAT PAGE, THAT'S TOTALLY FINE. ANY OF THESE  
11:22:41 4 WILL WORK. SO MR. FISHER, WE DON'T NEED TO FIND ANOTHER ONE,  
11:22:45 5 LET'S LOOK AT THAT ONE.

11:22:47 6 OKAY. SO IF WE GO TO WHERE THE COMMANDS ARE LISTED. HERE  
11:22:56 7 WE GO. SO FOR EXAMPLE, HERE IN THE ARISTA MANUAL, WHAT ARE WE  
11:23:04 8 LOOKING AT HERE?

11:23:05 9 A. SURE. SO FROM THE FIRST PAGE THIS WAS THE ARISTA USER  
11:23:10 10 REFERENCE MANUAL, I THINK AS PART OF THE SCROLLING YOU WENT  
11:23:13 11 THROUGH THE TABLE OF CONTENTS. AT THE END OF THE TABLE OF  
11:23:16 12 CONTENTS, THERE IS A LIST OF COMMANDS.

11:23:20 13 IN FACT, IT MIGHT BE WORTHWHILE TO GO BACK A COUPLE OF  
11:23:23 14 PAGES JUST TO SHOW -- RIGHT.

11:23:27 15 SO UNDER CHAPTER 3 HERE, IT HAS THIS COMMAND-LINE  
11:23:31 16 INTERFACE. AND THEN WHAT IT'S DOING OVER THE NEXT FEW PAGES IS  
11:23:34 17 LISTING THE COMMANDS FROM THE COMMAND-LINE INTERFACE.

11:23:37 18 AND IF YOU GO TO THE NEXT CHAPTER ON CHAPTER 4, THOSE ARE  
11:23:41 19 ALSO COMMANDS. IN FACT, THE FIRST ONE THERE UNDER CHAPTER 4,  
11:23:47 20 AAA ACCOUNTING, THAT'S ONE OF THE ONES THAT WE'VE SEEN, AAA  
11:23:52 21 AUTHENTICATION ENABLE, THAT'S ANOTHER COMMAND THAT WE'VE SEEN.

11:23:56 22 SO WITHIN THE ARISTA MANUALS, THEY LIST OUT WHAT THE  
11:24:00 23 IMPORTANT COMMANDS ARE. AND THOSE ARE THE SAME AS WHAT I'VE  
11:24:06 24 IDENTIFIED FROM THE CISCO CLI THAT THEY GOT COPIED.

11:24:11 25 Q. NOW, SIR, I WANT TO TURN TO ANOTHER TOPIC HERE. WERE YOU

11:24:15 1 HERE FOR DR. BLACK'S TESTIMONY WHERE HE BASICALLY SAID THAT  
11:24:20 2 ARISTA COPIED A TRIVIAL AMOUNT?

11:24:23 3 A. YES.

11:24:24 4 Q. DO YOU AGREE WITH THAT?

11:24:25 5 A. NO, I DON'T.

11:24:26 6 Q. AND WHY IS THAT?

11:24:27 7 A. WELL, I THINK IT'S MISLEADING. I THINK THAT JUST LOOKING  
11:24:31 8 AT ANY SORT OF NUMBERS OR CALCULATIONS IS MISLEADING. THAT  
11:24:36 9 WHAT YOU HAVE TO LOOK AT IS YOU HAVE TO LOOK AT THE SUBSTANCE  
11:24:38 10 OF WHAT WAS TAKEN.

11:24:39 11 AND MY UNDERSTANDING IS YOU HAVE TO LOOK AT BOTH THE  
11:24:42 12 QUANTITY AND THE QUALITY TO DETERMINE WHETHER OR NOT THERE WAS  
11:24:46 13 COPYING.

11:24:47 14 AND IF YOU LOOK AT THE EVIDENCE THAT DESCRIBES BOTH WHAT  
11:24:51 15 ARISTA WAS TRYING TO DO, THE FACT THAT THEY WERE CHARACTERIZING  
11:24:56 16 WHAT THEY WERE DOING AS IN TAKING THE IMPORTANT PARTS FROM THE  
11:25:00 17 CLI, IT'S CLEAR THAT WHAT THEY WERE TAKING WAS THE SUBSTANTIAL  
11:25:06 18 IMPORTANT PIECES OF THE CISCO CLI.

11:25:09 19 MR. NELSON: SO IF WE COULD PULL UP EXHIBIT 488,  
11:25:13 20 MR. FISHER, WHICH IS THE USABILITY STUDY THAT WE'VE TALKED  
11:25:18 21 ABOUT EARLIER, AND IF WE COULD GO TO PAGE 14.

11:25:26 22 Q. NOW SIR, WE TALKED ABOUT THIS ON THE LAST TIME YOU WERE ON  
11:25:30 23 THE STAND. BUT CAN YOU REMIND US WHAT PAGE 14 SHOWS HERE?

11:25:33 24 A. SURE. PAGE 14 SHOWS A COUPLE OF THINGS. CERTAINLY  
11:25:37 25 THERE'S THE GRAPH ON THE OVERALL PERFORMANCE.

11:25:40 1 I TALKED ABOUT THAT IN A LOT OF DETAIL ABOUT THE  
11:25:43 2 SIMILARITY AND THE SYNTAX BETWEEN IOS AND EOS.

11:25:48 3 BUT WHAT'S ALSO IMPORTANT IS WHEN YOU LOOK AT JUDGING THE  
11:25:52 4 SIMILARITY OF THE CLI'S BETWEEN THE TWO, WHAT'S IMPORTANT TO  
11:25:56 5 LOOK AT IS THE OVERLAP IN THE IMPORTANT COMMANDS. AND THERE'S  
11:26:00 6 A LINE AT THE END OF THAT FIRST PARAGRAPH THAT TALKS ABOUT ALL  
11:26:04 7 TESTS WERE CHOSEN BEFORE ANY TESTS WERE RUN.

11:26:07 8 SO THIS WAS A SELECTION OF TESTS THAT WERE DETERMINED TO  
11:26:11 9 BE IMPORTANT IN LOOKING AT THE SIMILARITY BETWEEN EOS AND IOS,  
11:26:16 10 AS WELL AS NX-OS.

11:26:17 11 IN FACT, IN THE BACK OF THIS EXHIBIT, THERE ARE PAGES AND  
11:26:21 12 PAGES OF WHAT THE COMMANDS WERE, WHAT THEY WERE ENTERED ON EACH  
11:26:25 13 OF THE SWITCHES AND THEN THE OUTPUTS FROM ENTERING THESE  
11:26:28 14 COMMANDS.

11:26:28 15 AND WHAT THIS USABILITY STUDY SHOWS IS ONE PIECE OF  
11:26:32 16 EVIDENCE IS, THAT WHEN ARISTA WAS COPYING THE CISCO CLI, THEY  
11:26:37 17 WERE TAKING THE IMPORTANT PIECES OF THAT CLI, THE PIECES THAT  
11:26:41 18 WERE NEEDED SO THAT SOMEBODY COULD CUT AND PASTE THEIR  
11:26:45 19 CONFIGURATION FROM CISCO AND HAVE IT IMMEDIATELY WORK ON AN  
11:26:50 20 ARISTA SWITCH.

11:26:50 21 Q. SO LET'S STOP THERE ON THE CUT AND PASTE THE CONFIGURATION  
11:26:56 22 FILES FROM THE CISCO SWITCH TO AN ARISTA SWITCH, HOW DOES THAT  
11:26:59 23 TELL YOU THAT IT'S A NONTRIVIAL PART?

11:27:02 24 A. IT'S A NONTRIVIAL PART BECAUSE IF YOU CAN CUT AND PASTE  
11:27:07 25 THAT CONFIGURATION, AND THE CONFIGURATION INCLUDES ALL OF THE

11:27:09 1 THINGS THAT YOU NEED TO DO TO GET THAT SWITCH UP AND RUNNING.

11:27:14 2 AND IF YOU HAVE AN ARISTA EMPLOYEE SAYING OR YOU HAVE A  
11:27:16 3 REPORT FROM AT&T SAYING THAT THESE THINGS ARE CLOSE ENOUGH,  
11:27:19 4 THAT THEY ARE CLONES OF EACH OTHER SO THAT YOU CAN CUT AND  
11:27:24 5 PASTE THAT CONFIGURATION AND IT'S STILL GOING TO WORK ON AN  
11:27:27 6 ARISTA PRODUCT, THEN THAT'S TELLING YOU THAT WHAT ARISTA HAS  
11:27:30 7 CHOSEN TO COPY IS THE SIGNIFICANT PORTIONS OF THE CLI.

11:27:35 8 Q. NOW DO YOU UNDERSTAND WHETHER DR. BLACK EVEN OFFERED AN  
11:27:43 9 OPINION ABOUT THE QUALITATIVE PORTION OF WHAT ARISTA TOOK?

11:27:50 10 A. I DO HAVE AN OPINION, AND THAT OPINION IS THAT HE DIDN'T  
11:27:53 11 LOOK AT THAT. I DID NOT HEAR HIM TESTIFY THAT HE LOOKED AT ANY  
11:27:58 12 ASPECT ABOUT THE QUALITY OR THE IMPORTANCE OF THE COMMANDS OF  
11:28:01 13 THE 506 COMMANDS THAT ARISTA COPIED.

11:28:04 14 Q. NOW WE'VE HEARD SOME TESTIMONY ABOUT THE OVERALL NUMBER OF  
11:28:07 15 COMMANDS IN IOS; YOU'VE HEARD THAT?

11:28:11 16 A. YES.

11:28:12 17 Q. NOW DO YOU THINK THAT THAT'S A PROPER ANALYSIS FOR  
11:28:15 18 DETERMINING WHETHER WHAT WAS COPIED BY ARISTA WAS A TRIVIAL  
11:28:19 19 AMOUNT?

11:28:20 20 A. NO. I MEAN, CISCO HAS LOTS AND LOTS OF DIFFERENT  
11:28:25 21 PRODUCTS. ARISTA DOESN'T MAKE PRODUCTS THAT COMPETE ACROSS THE  
11:28:29 22 BOARD WITH CISCO. AND SO ARISTA REALLY JUST TOOK THE COMMANDS  
11:28:34 23 THAT WERE IMPORTANT TO ARISTA.

11:28:37 24 AND THE ANALOGY IS IF YOU'VE GOT AN ENCYCLOPEDIA A TO Z,  
11:28:41 25 AND YOU HAVE IT WRITE A REPORT ON ELEPHANTS. AND SO YOU COPY



11:28:45 1 THE COUPLE OF PAGES FROM THE ENCYCLOPEDIA ON ELEPHANT, SOMEBODY  
11:28:50 2 COULD COME IN AND SAY, WELL, THERE WERE 10,000 PAGES AND YOU  
11:28:54 3 ONLY TOOK THESE TWO, SO THAT'S NOT A VERY SIGNIFICANT AMOUNT.

11:28:57 4 BUT THE REALITY IS THAT YOU WERE COPYING THE IMPORTANT  
11:29:01 5 PIECES TO WHAT YOU NEEDED. AND IT WAS A SUBSTANTIAL PORTION OF  
11:29:04 6 YOUR REPORT ON ELEPHANTS.

11:29:06 7 AND SO YOU HAVE TO CONSIDER THOSE TWO FACTORS TOGETHER  
11:29:09 8 WHEN LOOKING AT THE QUESTION OF WHETHER OR NOT WHAT WAS TAKEN  
11:29:13 9 WAS SUBSTANTIAL.

11:29:17 10 Q. SO NOW ON THAT POINT, I WOULD LIKE YOU TO PUT UP  
11:29:23 11 EXHIBIT 4797 AS A DEMONSTRATIVE.

11:29:26 12 MR. NELSON: IF WE COULD PUT THAT UP, MR. FISHER.

11:29:31 13 Q. SO CAN YOU TELL US WHAT WE ARE LOOKING AT HERE, SIR?

11:29:35 14 A. SURE. THIS IS A TABLE THAT I PUT TOGETHER AS PART OF MY  
11:29:38 15 REPORT. FOUR COLUMNS.

11:29:41 16 THE FIRST ONE IS THE EOS VERSION, THAT'S THE SOFTWARE THAT  
11:29:44 17 RUNS ON THE ARISTA SWITCHES. THE NUMBER OF COMMANDS THAT WERE  
11:29:50 18 COPIED FROM CISCO, OBVIOUSLY WE HAVE BEEN TALKING ABOUT 506  
11:29:54 19 OVER AND OVER AGAIN.

11:29:56 20 THE EARLIEST VERSIONS DIDN'T COPY 506, BUT WHAT'S  
11:30:00 21 IMPORTANT TO LOOK AT IS THAT THIRD COLUMN, WHICH IS THE TOTAL  
11:30:04 22 NUMBER OF COMMANDS IN THE EOS USER MANUAL.

11:30:07 23 SO YOU ASKED ME QUESTIONS ABOUT THE ONE EXHIBIT WHERE WE  
11:30:10 24 WENT THROUGH THE TABLE OF CONTENTS, AND THE EOS MANUAL HAS A  
11:30:14 25 LIST OF ALL OF THE COMMANDS FOR THAT VERSION OF EOS THAT IT

THINKS ARE IMPORTANT AND IS DESCRIBING IN THE MANUAL.

SO THE COUNT IN THAT THIRD COLUMN COMES FROM THE USER  
MANUAL FOR THAT PARTICULAR VERSION.

AND THEN YOU DO THE MATH THERE AND YOU SEE THAT IN THE  
VERY FIRST VERSION, THAT 52 PERCENT OF THE COMMANDS THAT EOS  
DESCRIBED IN ITS MANUAL CAME FROM CISCO.

AND YOU CAN LOOK AT THE PERCENTAGES DOWN THE COLUMN AS  
HIGH AS 67 PERCENT, AND THEN CURRENTLY IN THE LAST VERSION  
ANALYZED IT WAS 37 PERCENT.

Q. AND IF WE LOOK AT THAT LAST VERSION OF 37 PERCENT, WHAT  
DOES THE 37 PERCENT REPRESENT, AGAIN?

A. IT REPRESENTS THE PERCENTAGE OF CISCO COMMANDS THAT WERE  
COPIED, 506, FROM THE NUMBER OF COMMANDS THAT ARE LISTED IN THE  
ARISTA EOS MANUAL. AND THEN YOU DO THE MATH.

Q. SO THEN, SIR, BASED UPON SOME OF THE TESTIMONY THAT WE'VE  
HEARD HERE, DO YOU HAVE AN UNDERSTANDING OF WHY THERE ARE  
COMMANDS ADDED OVER TIME INTO THE ARISTA EOS VERSIONS?

A. THAT THERE'S DIFFERENT FUNCTIONALITY, AND ARISTA CERTAINLY  
HAS THE ABILITY TO CREATE ITS OWN COMMANDS FOR THAT ADDITIONAL  
FUNCTIONALITY. AND SO THEY HAVEN'T COPIED EVERY SINGLE  
COMMAND, BUT CERTAINLY A SUBSTANTIAL PORTION.

Q. NOW, IF WE CAN GO TO SLIDE 17 -- ACTUALLY, THIS SAYS 18.  
NO, YOU ARE RIGHT, I THINK IT IS 18.

MR. NELSON: LET'S GO BACK ONE, MR. FISHER, TO 17.  
AND WE WILL TALK ABOUT THAT ONE FIRST.

11:32:09 1 Q. OKAY. SO WHAT ARE WE SHOWING HERE ON SLIDE 17?

11:32:11 2 A. SURE. OF THERE'S TWO GRAPHS THAT GO TOGETHER, PAGES 17  
11:32:15 3 AND 18. WHAT YOU SEE HERE IS THE SAME INFORMATION FROM THAT  
11:32:19 4 LAST TABLE.

11:32:20 5 AND NOW IT'S CHARTED AS A BAR GRAPH, BUT IT ALSO SHOWS THE  
11:32:25 6 TIME FOR WHEN EACH OF THESE MANUALS WAS PUBLISHED. SO YOU CAN  
11:32:29 7 SEE THIS INFORMATION OVER TIME.

11:32:31 8 SO FROM 2009, THE NUMBER OF COMMANDS THAT ARISTA COPIED  
11:32:35 9 FROM CISCO WAS RIGHT AROUND 100. AND THAT IS THE SAME AS WITH  
11:32:41 10 THE TABLE.

11:32:42 11 AND THEN SLIDE 18, THE NEXT ONE, THEN SHOWS THE NUMBER OF  
11:32:48 12 TOTAL COMMANDS THAT WERE IN EOS.

11:32:50 13 Q. SO IF WE JUST FOCUS HERE, LET'S GO BACK TO SLIDE 17, ON  
11:32:55 14 VERSION 4.1.0; DO YOU SEE THAT?

11:32:59 15 A. 4.10.0?

11:33:03 16 Q. YEAH, I SAID THAT WRONG. 4.10.0. THANK YOU, SIR. LET'S  
11:33:08 17 LOOK AT THAT ONE.

11:33:09 18 AND WHAT'S THE DATE THERE?

11:33:11 19 A. THAT IS JULY 19TH, 2012.

11:33:16 20 Q. SO IF WE GO BACK TO EXHIBIT 4797 THAT WE WERE LOOKING AT,  
11:33:22 21 CAN YOU TELL US WHERE THAT FALLS INTO THE CHART?

11:33:27 22 A. 4.10.0 IS RIGHT THERE, THAT LINE.

11:33:32 23 Q. AND WHAT DO YOU SEE HAPPENING THERE AT 4.10.0?

11:33:37 24 A. WHAT YOU SEE IS A SIGNIFICANT JUMP IN THAT 2012 TIMEFRAME,  
11:33:41 25 BOTH IN TERMS OF THE NUMBER OF COMMANDS THAT ARISTA HAS OVER

11:33:45 1 ALL, BUT ALSO A CORRESPONDING JUMP IN THE NUMBER OF COMMANDS  
11:33:49 2 THAT THEY'VE COPIED FROM CISCO.

11:33:51 3 Q. AND DO YOU KNOW WHY THAT IS?

11:33:52 4 A. I DO. IT'S BASICALLY WHEN THEY INTRODUCED THEIR CLOUD  
11:33:56 5 SWITCH WHERE THEY ADDED ALL OF THE ADDITIONAL FUNCTIONALITY TO  
11:34:00 6 THE SWITCH.

11:34:01 7 Q. NOW, SIR, I WOULD LIKE TO TURN TO ANOTHER TOPIC HERE. AND  
11:34:11 8 THAT CONCERNS SOME OF THE DR. BLACK'S OPINIONS REGARDING  
11:34:15 9 WIDESPREAD USE OF THE CISCO CLI.

11:34:20 10 A. YES.

11:34:20 11 Q. DO YOU RECALL THAT TESTIMONY?

11:34:21 12 A. I DO.

11:34:23 13 Q. AND DO YOU BELIEVE THAT DR. BLACK'S DATA SHOW THAT THERE  
11:34:29 14 WAS ACTUALLY WIDESPREAD USE OF THE CISCO CLI?

11:34:33 15 A. NO, IT DID NOT.

11:34:34 16 Q. AND CAN YOU TELL US WHY THAT IS?

11:34:36 17 A. SURE. SO AS I TESTIFIED EARLIER IN CROSS-EXAMINATION LAST  
11:34:42 18 WEEK WHEN MR. VAN NEST WAS ASKING ME QUESTIONS, I HAVE REAL  
11:34:47 19 PROBLEMS WITH THE METHODOLOGY THAT HE USED.

11:34:50 20 IF YOU THINK ABOUT THE NUMBER OF COMPANIES THAT DO  
11:34:53 21 NETWORKING AND PRODUCE SWITCHES, SINCE THE TIME THAT THESE  
11:34:57 22 COMMANDS WERE CREATED IN ABOUT 1986, THERE ARE HUNDREDS OF  
11:35:01 23 COMPANIES.

11:35:03 24 AND, ESSENTIALLY, WHAT DR. BLACK DID IS HE NARROWED THE  
11:35:07 25 NUMBER OF COMPANIES DOWN TO 18. AND THEN HE WANTED TO ARGUE

11:40:55 1 WAS ABOUT THE SAME AS IT IS NOW.

11:40:57 2 Q. AND YOUR VIEW IS THAT THE COMMANDS THAT ARISTA USED FROM  
11:41:01 3 CISCO WERE THE ONES THEY NEEDED TO USE, THE MOST IMPORTANT  
11:41:04 4 ONES?

11:41:05 5 A. THAT'S CORRECT.

11:41:05 6 Q. AND THE ONES THAT FORMED SORT OF THE CORE OF THEIR SWITCH;  
11:41:10 7 RIGHT?

11:41:10 8 A. THE CORE OF THE USER INTERFACE, THAT'S CORRECT.

11:41:13 9 Q. OKAY. AND THAT A HUNDRED OF THOSE WAS ENOUGH IN 2009 TO  
11:41:18 10 BE SORT OF THE CORE OF THEIR USER INTERFACE; RIGHT?

11:41:21 11 A. THAT'S CORRECT. GIVEN THAT THEIR USER INTERFACE IN 2009  
11:41:25 12 WAS QUITE SMALL, AND THE TOTAL NUMBER OF COMMANDS OVERALL WAS  
11:41:29 13 VERY SMALL, THAT ABOUT 100 COMMANDS AT ABOUT 50 PERCENT WAS A  
11:41:35 14 SIGNIFICANT PERCENTAGE.

11:41:35 15 Q. NOW THERE ARE MANY OF THE MAJOR VENDORS THAT COMPETE WITH  
11:41:41 16 ARISTA AND CISCO THAT USE FAR MORE THAN 100 OF THESE SAME  
11:41:45 17 COMMANDS YOU ARE COMPLAINING ABOUT HERE; RIGHT?

11:41:47 18 A. AGAIN, YOU HAVE TO LOOK AT THE ANALYSIS -- WELL, LET ME  
11:41:52 19 SAY.

11:41:52 20 Q. CAN YOU ANSWER MY QUESTION?

11:41:53 21 A. YEAH, THAT'S WHAT I WAS GOING TO TRY AND DO.

11:41:56 22 THAT'S GENERALLY CORRECT, BUT YOU HAVE TO LOOK AT THE  
11:41:59 23 TOTAL NUMBER OF COMMANDS THAT THEY SUPPORT.

11:42:01 24 AND REALLY, IF YOU LOOK AT 100 THEN VERSUS 506 NOW, AND AT  
11:42:06 25 MOST IT'S A COUPLE OF HUNDRED, THAT REALLY IS A SIGNIFICANT

12:01:09 1 A. NOW THIS PART WAS FOCUSED ON THE MANUAL. AND THE REASON  
12:01:13 2 WHY I DID THAT WAS TO EMPHASIZE WHETHER ARISTA WAS TEACHING TO  
12:01:17 3 ITS CUSTOMERS WHAT IT THOUGHT WERE THE IMPORTANT COMMANDS  
12:01:19 4 CONSISTENT WITH THE OTHER TESTIMONY I HAD SEEN ABOUT COPYING  
12:01:23 5 THE CLI.

12:01:23 6 Q. BUT JUST TO BE CLEAR, YOU DID HAVE ACCESS TO THE ARISTA  
12:01:26 7 SWITCH; RIGHT?

12:01:27 8 A. I DID.

12:01:28 9 Q. AND YOU HAD -- IT WAS AVAILABLE IN OUR OFFICE?

12:01:30 10 A. IT WAS.

12:01:31 11 Q. YOU CAME AND TESTED IT A NUMBER OF TIMES AS YOU SAID LAST  
12:01:34 12 TIME?

12:01:34 13 A. YES, SIR.

12:01:35 14 Q. BUT YOU NEVER USED IT TO DETERMINE HOW MANY COMMANDS IN  
12:01:38 15 TOTAL IT SUPPORTED, DO I HAVE THAT RIGHT?

12:01:40 16 A. THAT'S PARTLY CORRECT. I DIDN'T NEED TO BECAUSE THE USER  
12:01:45 17 MANUAL IS DESCRIBED AS THE AUTHORITATIVE SOURCE, AND IT LISTS  
12:01:50 18 THOSE COMMANDS.

12:01:50 19 Q. NOW YOU HAVE ON THE VERY BOTTOM OF THAT EOS COLUMN, 1352.  
12:01:55 20 AGAIN, THOSE ARE COMMANDS COUNTED FROM THE MANUAL; RIGHT?

12:01:58 21 A. YES.

12:01:58 22 Q. AND YOU HAD ACCESS TO MR. SWEENEY'S TESTIMONY IN PREPARING  
12:02:04 23 YOUR REPORT; RIGHT?

12:02:05 24 A. I DID.

12:02:05 25 Q. AND AS A MATTER OF FACT, YOUR REPORT IS CHALK FULL OF

12:02:09 1 QUOTES FROM PEOPLE AT ARISTA; RIGHT?

12:02:11 2 A. IT IS.

12:02:12 3 Q. BUT MR. SWEENEY, WHO IS THE HEAD OF SOFTWARE ENGINEERING  
12:02:18 4 AT ARISTA, HE ESTIMATES THAT THERE ARE 10 TO 15,000 COMMANDS?

12:02:24 5 MR. NELSON: OBJECTION, YOUR HONOR.

12:02:25 6 MR. VAN NEST: IN EOS, RIGHT?

12:02:26 7 MR. NELSON: THOSE FACTS ARE NOT IN EVIDENCE. I  
12:02:28 8 DIDN'T BRING MR. SWEENEY.

12:02:30 9 MR. VAN NEST: THIS IS FROM THE DEPOSITION TRANSCRIPT  
12:02:31 10 THAT HE REVIEWED, YOUR HONOR, AS PART OF HIS REPORT.

12:02:35 11 THE COURT: WELL, YOU CAN SHOW IT TO HIM.

12:02:36 12 MR. VAN NEST: I WILL.

12:02:39 13 COULD I HAVE THE SLIDE UP WITH MR. SWEENEY'S TESTIMONY.  
12:02:43 14 BY MR. VAN NEST:

12:02:44 15 Q. NOW YOU REMEMBER THAT YOU HAD ACCESS TO ALL THESE  
12:02:46 16 DEPOSITIONS; RIGHT?

12:02:48 17 A. YES, SIR.

12:02:49 18 Q. AND YOU REVIEWED THEM?

12:02:50 19 A. YES.

12:02:51 20 Q. AND YOU FILLED YOUR REPORT WITH THEM?

12:02:53 21 A. YES.

12:02:53 22 Q. BUT THIS IS ONE THAT DIDN'T MAKE YOUR REPORT; RIGHT?

12:02:58 23 A. I WOULD HAVE TO GO BACK AND SEE. CERTAINLY I'M AWARE THAT  
12:03:01 24 HE HAD MADE THAT STATEMENT.

12:03:04 25 Q. AND HIS STATEMENT WAS THAT WE COUNTED RECENTLY AND THERE

12:03:08 1 ARE BETWEEN 10 AND 15,000 COMMANDS IN EOS; RIGHT?

12:03:12 2 A. YES, AND I CERTAINLY BELIEVE THAT'S WHAT HE THINKS AND I  
12:03:15 3 THINK WHEN YOU COUNT DIFFERENT PARAMETER OPTIONS, THAT YOU CAN  
12:03:19 4 ADD TO THE END OF A COMMAND OR THE IDEA OF ADDING THE WORD "NO"  
12:03:23 5 TO THE BEGINNING OF A COMMAND, HE'S DOUBLE-COUNTED THOSE AND  
12:03:28 6 POTENTIALLY TRIPLE-COUNTED THOSE.

12:03:30 7 SO I THINK WHEN YOU LOOK AT THE USER MANUAL AS THE SET OF  
12:03:36 8 COMMANDS THAT ARE DESCRIBED AS AVAILABLE, MY NUMBERS FROM THE  
12:03:40 9 MANUAL ARE THE MOST ACCURATE NUMBERS.

12:03:43 10 Q. SO LET'S GO BACK UP TO THE CHART THAT WE HAD UP BEFORE.  
12:03:46 11 SO IF THE JURY WERE TO CONCLUDE, BASED ON DR. BLACK'S TESTIMONY  
12:03:50 12 OR ANY OTHER EVIDENCE, THAT THERE ARE 10,000 COMMANDS IN EOS,  
12:03:55 13 YOUR PERCENTAGE NUMBER ON THE RIGHT GOES WAY DOWN FROM  
12:03:58 14 37 PERCENT; RIGHT?

12:03:59 15 A. JUST DOING THE MATH, THAT WOULD BE CORRECT.

12:04:03 16 Q. RIGHT. JUST DOING THE MATH, THAT NUMBER WOULD BE DOWN  
12:04:06 17 AROUND THREE PERCENT, 4 PERCENT; RIGHT, DR. ALMEROTH?

12:04:10 18 A. IF THE JURY WERE TO BELIEVE THAT THERE WEREN'T 1352  
12:04:14 19 COMMANDS THAT THE MANUAL DESCRIBES, THEN THAT NUMBER WOULD GO  
12:04:18 20 DOWN.

12:04:18 21 Q. AND IT WOULD GO DOWN TO ABOUT 3 PERCENT; RIGHT?

12:04:21 22 A. WELL, THE ONLY EVIDENCE THAT WE REALLY HAVE IS TO WHAT THE  
12:04:27 23 ACCURATE COMMANDS ARE, IS WHAT'S IN THE MANUAL.

12:04:32 24 I MEAN, IF THEY WERE TO BELIEVE THIS DEPOSITION TESTIMONY  
12:04:35 25 IS TO BE ACCURATE, THEN THAT WOULD BE THE CALCULATION THAT YOU



01:17:13 1 MR. VAN NEST: SLIDE 16.

01:17:14 2 MR. NELSON: 16, THANK YOU, MR. VAN NEST.

01:17:17 3 Q. SLIDE 16, THE NUMBERS OVER TIME.

01:17:20 4 A. OH, RIGHT, RIGHT.

01:17:21 5 Q. SO SLIDE 16. THERE WE GO.

01:17:35 6 ALL RIGHT. SO YOU WERE ASKED SOME QUESTIONS ABOUT THE  
01:17:40 7 NUMBER IN THE -- I GUESS IT'S NOT THE MIDDLE, IT'S THE THIRD  
01:17:45 8 COLUMN.

01:17:46 9 AND THOSE WERE THE COMMANDS IN THE USER MANUAL; IS THAT  
01:17:46 10 RIGHT?

01:17:54 11 A. YES.

01:17:54 12 Q. SO WHAT'S THE USER MANUAL FOR?

01:17:56 13 A. IT'S TO INSTRUCT THE USERS ON WHAT THE COMMANDS ARE. IT  
01:18:00 14 TELLS THE USERS OF THE SWITCHES WHAT COMMANDS THEY HAVE  
01:18:03 15 AVAILABLE TO THEM.

01:18:04 16 Q. SO DOES IT MAKE ANY SENSE TO HAVE A BUNCH OF IMPORTANT  
01:18:08 17 COMMANDS THAT YOU DON'T TELL THE USER ABOUT?

01:18:10 18 A. NO, NOT IMPORTANT ONES.

01:18:11 19 Q. WHY DO YOU SAY THAT?

01:18:12 20 A. WELL, I MEAN, THAT'S WHAT THE MANUAL IS FOR IS TO PUT THE  
01:18:15 21 IMPORTANT COMMANDS. AND IF THERE'S SOMETHING THAT THEY LEAVE  
01:18:19 22 OUT OF THE USER MANUAL, THAT'S PRETTY MUCH THE THRESHOLD FOR  
01:18:23 23 WHY IT WOULDN'T BE IMPORTANT.

01:18:24 24 MR. NELSON: THANK YOU, SIR.

01:18:25 25 I DON'T HAVE ANY FURTHER QUESTIONS.

01:46:29 1 A. CORRECT. SO WE ARE LOOKING AT MARKET HARM.

01:46:32 2 Q. AND WHAT IS YOUR OPINION REGARDING FACTOR FOUR, WHICH IS  
01:46:37 3 WHAT IS THE MARKET IMPACT OF THE INFRINGING USE OF CISCO CLI?

01:46:42 4 A. SO IT'S MY OPINION THAT ARISTA'S USE OF THE INFRINGING CLI  
01:46:48 5 HARMS CISCO IN THE MARKETPLACE. AND CISCO, BECAUSE OF THAT,  
01:46:54 6 HAS LOST SOME OF THE VALUE OF ITS INTELLECTUAL PROPERTY.

01:46:59 7 AND YOU KNOW, THE REASONS THAT I BELIEVE THAT SHOULD BE  
01:47:03 8 CLEAR FROM THE TESTIMONY THAT I'VE ALREADY GIVEN, ALL RIGHT.

01:47:07 9 SO WE HAVE SEEN EVIDENCE THAT CISCO LOST SHARE IN THE  
01:47:11 10 MARKETPLACE TO ARISTA DUE TO ARISTA'S INFRINGEMENT.

01:47:19 11 Q. OKAY. AND DO YOU HAVE AN UNDERSTANDING WHETHER ARISTA'S  
01:47:22 12 SWITCHES AND CISCO'S SWITCHES USE THE SAME SOURCE CODE OR  
01:47:25 13 DIFFERENT SOURCE CODE?

01:47:27 14 A. SO MY UNDERSTANDING IS THAT FROM THE TESTIMONY THAT I'VE  
01:47:32 15 HEARD, THAT THEY USE DIFFERENT SOURCE CODE.

01:47:34 16 Q. STOW WHAT'S THE IMPLICATION OF THAT WHEN YOU ARE LOOKING  
01:47:36 17 AT THE ECONOMIC VALUE OF THE CISCO CLI?

01:47:38 18 A. SO THE ECONOMIC OPINIONS THAT I HAVE STATED HERE ARE  
01:47:43 19 OPINIONS ABOUT THE INTERFACE AND TRAINING AND EASE OF USE AND  
01:47:49 20 CUTTING AND PASTING SCRIPTS.

01:47:52 21 SO THAT REALLY DOESN'T HAVE ANYTHING TO DO WITH THE SOURCE  
01:48:00 22 CODE. CISCO AND ARISTA ARE USING DIFFERENT SOURCE CODE, BUT  
01:48:02 23 THEY ARE BOTH GETTING, FROM MY ANALYSIS, THE BENEFIT FROM THE  
01:48:06 24 CLI AND THE COPYRIGHTED WORK.

01:48:07 25 Q. SO LOOKING AT ALL THE EVIDENCE AND THE ANALYSIS YOU'VE

01:48:10 1 DONE, WHAT'S YOUR OPINION AS TO WHETHER THE CISCO CLI AS A USER  
01:48:13 2 INTERFACE HAS ECONOMIC VALUE SETTING ASIDE THE SOURCE CODE?

01:48:17 3 A. SO IT'S MY OPINION, AS I THINK MY TESTIMONY HAS MADE  
01:48:21 4 CLEAR, THAT THE CLI ITSELF HAS ECONOMIC VALUE.

01:48:23 5 Q. OKAY. AND JUST ONE LAST THING, I KNOW WE TALKED A LOT  
01:48:27 6 ABOUT BUT FOR CAUSATION, AND THAT WAS SOMETHING THAT WE'VE  
01:48:30 7 HEARD A LOT ABOUT IN THIS CASE, COULD YOU JUST HELP THE JURY  
01:48:33 8 OUT A LITTLE BIT, AND USING A COMMON EXAMPLE, CAN YOU EXPLAIN  
01:48:36 9 TO US WHAT YOU MEAN BY A BUT-FOR CAUSATION?

01:48:39 10 A. OKAY. FIRST, LET ME JUST REPEAT WHAT BUT-FOR CAUSATION  
01:48:44 11 IS.

01:48:44 12 SO IN MY LOST PROFITS ANALYSIS, LOST PROFITS ARE WARRANTED  
01:48:48 13 IF CISCO LOSES SALES THAT IT WOULD NOT HAVE LOST IF ARISTA DID  
01:49:00 14 NOT INFRINGE CISCO'S CLI.

01:49:02 15 AND MAYBE I WILL TRY TO BE A LITTLE MORE, YOU KNOW,  
01:49:06 16 REAL-WORLD ABOUT THAT.

01:49:07 17 SO IMAGINE THAT I HAD A VERY STRONG PREFERENCE TO GET A  
01:49:12 18 RED CAR. THAT I JUST -- YOU KNOW, I WAS GOING TO GET A RED  
01:49:16 19 CAR. I HAVEN'T GOTTEN ONE YET, BUT I WOULD LIKE ONE.

01:49:19 20 SO I GET -- IF I DECIDE THAT MY HEART IS SET ON GETTING A  
01:49:24 21 RED CAR AND I'M IN A HURRY, I MIGHT GO TO SOME AUTO DEALERS AND  
01:49:29 22 ASK THEM TO SHOW ME WHAT THEY HAD ON THE LOT IN RED.

01:49:32 23 AND I WOULD, YOU KNOW, GET MORE THAN ONE CHOICE, I'M SURE,  
01:49:35 24 IF I SHOPPED AROUND.

01:49:36 25 AND THEN, YOU KNOW, I WOULD HAVE A SET OF RED CARS FROM

03:08:11 1 SOMETIMES YOU FORGET, SOMETIMES WE MAKE A MISTAKE, BUT I  
03:08:15 2 DON'T HOLD YOU TO SAYING YOU RESTED AND THEN SOMETHING IS JUST  
03:08:18 3 LEFT OUT. SO YOU HAVE AN OPPORTUNITY TO DO THAT.

03:08:22 4 WE TALKED ABOUT IDENTIFYING THE EXHIBITS THAT MAKE UP THE  
03:08:27 5 WORKS. AND I WOULD LIKE A COPY OF THOSE EXHIBITS EXTRACTED,  
03:08:32 6 BUT I HAD ASKED THE QUESTION, AND WE MAY HAVE RESOLED THIS, BUT  
03:08:36 7 WERE WE GOING TO TELL THE JURY SPECIFICALLY WHICH EXHIBITS MAKE  
03:08:40 8 UP THE WORKS IN THE CASE, OR NOT?

03:08:48 9 I SAID YESTERDAY I DON'T NORMALLY CALL OUT EXHIBITS TO  
03:08:51 10 THE JURY, THAT MUCH I REMEMBER. BUT IT'S CONTINUED TO NAG ME  
03:08:55 11 THAT I'M TELLING THEM TO EXAMINE THE WORKS AS A WHOLE AND HOW  
03:09:00 12 WILL THEY FIND THEM?

03:09:03 13 SO I NEED TO BE PERSUADED THAT I CAN EITHER LEAVE IT  
03:09:06 14 ALONE OR DO SOMETHING.

03:09:07 15 MR. NELSON: I THINK YOU CAN LEAVE IT ALONE.

03:09:10 16 YOU DEFINED THEM IN THE JURY INSTRUCTION AND BOTH IN THE  
03:09:13 17 PRELIMINARY INSTRUCTION. I THINK FOR ARGUMENT PURPOSES,  
03:09:15 18 WHETHER MR. VAN NEST OR MYSELF, WHEN I IDENTIFY THE PARTICULAR  
03:09:20 19 EXHIBITS THAT THEY SHOULD LOOK AT FOR THAT, IF THAT'S RELEVANT,  
03:09:23 20 THEY CAN DO THAT.

03:09:24 21 WE HAVE THOSE THINGS IN EVIDENCE AND WE CERTAINLY CAN  
03:09:27 22 IDENTIFY THOSE, AT LEAST THE KEY ONES. YOU KNOW, PART OF THE  
03:09:30 23 PROBLEM IS THAT WE HAD THAT ONE EXHIBIT THAT WAS ALL THE  
03:09:34 24 REGISTRATIONS AND IT'S -- I MEAN, THAT WOULD TAKE PROBABLY AN  
03:09:38 25 HOUR FOR YOUR HONOR TO JUST READ ALL THOSE NUMBERS. I MEAN,

03:09:42 1 MAYBE NOT, BUT CLOSE.

03:09:44 2 SO I'M NOT SURE THAT THAT'S SOMETHING THAT WE WANT TO PUT  
03:09:47 3 INTO THE JURY INSTRUCTION NOR DO I THINK THAT IT --

03:09:51 4 THE COURT: OKAY. WELL, HERE'S WHAT -- I GUESS --  
03:09:54 5 I'M GOING TO BE INSTRUCTING THEM ABOUT COMPARING THE WORK. I  
03:09:58 6 THINK YOU NEED TO HAVE AVAILABLE FOR ME, IF I GET A QUESTION,  
03:10:02 7 WHERE WOULD WE FIND THE WORK.

03:10:04 8 MR. NELSON: YOU'VE GOT IT.

03:10:06 9 THE COURT: YOU MIGHT NEVER GET THE QUESTION, BUT I  
03:10:09 10 DON'T WANT YOU COMPILING IT WHEN THE QUESTION COMES OUT.

03:10:12 11 MR. NELSON: WE CERTAINLY CAN DO THAT.

03:10:14 12 THE COURT: AND AS I SAY, I NEVER CALL OUT EXHIBITS  
03:10:17 13 TO THE JURY, IT'S FOR THEM TO DETERMINE WHICH ONES ARE  
03:10:21 14 IMPORTANT AND WHICH ONES AREN'T. SO I WILL STICK TO MY NORMAL  
03:10:23 15 TRAINING AND NOT DO THAT, BUT THAT'S A CONCERN I HAVE. SO IF  
03:10:26 16 YOU CAN AT LEAST HAVE THAT AVAILABLE, THAT WOULD BE GREAT.

03:10:29 17 AND I GUESS, YOU KNOW, WE ALWAYS HOPE THERE ARE NO  
03:10:31 18 QUESTIONS, THAT EVERYTHING HAS BEEN ABUNDANTLY CLEAR FOR THE  
03:10:34 19 JURY.

03:10:35 20 OKAY. THAT'S FINE. AND THEY DO HAVE THE GENERAL LIST OF  
03:10:38 21 EXHIBITS, SO THAT'S HELPFUL.

03:10:39 22 ALL RIGHT. THAT'S MY ONLY HOUSEKEEPING. ANY REAL  
03:10:46 23 HOUSEKEEPING BEFORE WE GO TO THE MOTIONS?

03:10:48 24 MR. FERRALL: I HAVE A VERY MINOR HOUSEKEEPING WHICH  
03:10:52 25 IS, I WOULD LIKE TO MARK THOSE TWO DRAWINGS AS DEMONSTRATIVES.

08:25:16

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) DECEMBER 12, 2016  
)  
ARISTA NETWORKS, INC., ) VOLUME 13  
)  
DEFENDANT ) PAGES 2656-2822  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
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APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
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REGARDLESS OF WHICH PARTY PRESENTED IT.

COPYRIGHT IS THE EXCLUSIVE RIGHT TO COPY. THIS RIGHT TO COPY INCLUDES THE EXCLUSIVE RIGHTS TO OR TO AUTHORIZE OTHERS TO:

1. REPRODUCE THE COPYRIGHTED WORK IN COPIES.

2. RECAST OR ADAPT THE WORK. THAT IS, PREPARE DERIVATIVE WORKS BASED UPON THE COPYRIGHTED WORK.

3. DISTRIBUTE COPIES OF THE COPYRIGHTED WORK TO THE PUBLIC BY SALE OR OTHER TRANSFER OF OWNERSHIP.

4. DISPLAY PUBLICLY A COPYRIGHTED WORK.

IT IS THE OWNER OF A COPYRIGHT WHO MAY EXERCISE THESE EXCLUSIVE RIGHTS.

THE TERM "OWNER" INCLUDES THE AUTHOR OF THE WORK. IN GENERAL, COPYRIGHT LAW PROTECTS AGAINST REPRODUCTION, ADAPTATION, DISTRIBUTION, OR DISPLAY OF INFRINGING COPIES OF THE OWNER'S COPYRIGHTED WORK WITHOUT THE OWNER'S PERMISSION. AN OWNER MAY ENFORCE THESE RIGHTS TO EXCLUDE OTHERS IN AN ACTION FOR COPYRIGHT INFRINGEMENT.

THE COPYRIGHTED WORKS INVOLVED IN THIS TRIAL ARE:

1. CISCO'S FOUR USER INTERFACES FOR IOS, IOS XR, IOS XE, AND NX-OS.

2. CISCO'S TECHNICAL MANUALS.

YOU ARE INSTRUCTED THAT A COPYRIGHT MAY BE OBTAINED IN USER INTERFACES AND TECHNICAL MANUALS.

COPYRIGHT LAW ALLOWS THE AUTHOR OF AN ORIGINAL WORK TO

09:21:23 1 STOP OTHERS FROM COPYING THE ORIGINAL EXPRESSION IN THE  
09:21:28 2 AUTHOR'S WORK. ONLY THE PARTICULAR EXPRESSION OF AN IDEA CAN  
09:21:32 3 BE COPYRIGHTED AND PROTECTED.

09:21:35 4 COPYRIGHT LAW DOES NOT GIVE THE AUTHOR THE RIGHT TO  
09:21:38 5 PREVENT OTHERS FROM COPYING OR USING THE UNDERLYING IDEAS  
09:21:42 6 CONTAINED IN THE WORK, SUCH AS ANY PROCEDURES, PROCESSES,  
09:21:45 7 SYSTEMS, METHODS OF OPERATION, CONCEPTS, PRINCIPLES OR  
09:21:51 8 DISCOVERIES.

09:21:58 9 ANYONE WHO COPIES ORIGINAL PROTECTABLE EXPRESSION FROM A  
09:22:04 10 COPYRIGHTED WORK DURING THE TERM OF THE COPYRIGHT WITHOUT THE  
09:22:08 11 OWNER'S PERMISSION INFRINGES THE COPYRIGHT.

09:22:12 12 CISCO HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE  
09:22:16 13 EVIDENCE THAT:

09:22:17 14 1. CISCO IS THE OWNER OF A VALID COPYRIGHT.

09:22:21 15 2. ARISTA COPIED ORIGINAL, PROTECTABLE EXPRESSION FROM  
09:22:24 16 THE COPYRIGHTED WORK.

09:22:29 17 CISCO IS THE OWNER OF VALID COPYRIGHTS IN ITS FOUR USER  
09:22:33 18 INTERFACES FOR IOS, IOS XR, IOS XE AND NX-OS AND RELATED  
09:22:42 19 DOCUMENTATION IF CISCO PROVES BY A PREPONDERANCE OF THE  
09:22:47 20 EVIDENCE THAT:

09:22:48 21 1. CISCO'S WORKS ARE ORIGINAL.

09:22:51 22 2. CISCO IS THE AUTHOR OR CREATOR OF THE WORKS, OR THE  
09:22:54 23 AUTHOR OR CREATOR ASSIGNED OR EXCLUSIVELY LICENSED THE WORKS TO  
09:23:01 24 CISCO.

09:23:05 25 A COPYRIGHT OWNER MAY OBTAIN A CERTIFICATE OF REGISTRATION



FROM THE COPYRIGHT OFFICE. THE EVIDENCE IN THIS CASE INCLUDES  
26 CERTIFICATES OF COPYRIGHT REGISTRATION FROM THE COPYRIGHT  
OFFICE FOR CISCO'S COPYRIGHTED WORKS.

IF YOU FIND THAT A CERTIFICATE WAS MADE WITHIN FIVE YEARS  
AFTER FIRST PUBLICATION OF THAT WORK, YOU MAY CONSIDER THAT  
CERTIFICATE AS EVIDENCE OF THE FACTS STATED IN IT.

FROM THE CERTIFICATE, YOU MAY, BUT NEED NOT, CONCLUDE THAT  
THE WORK IS ORIGINAL AND COPYRIGHTABLE AND THAT CISCO OWNS THE  
COPYRIGHT IN THAT WORK.

AN ORIGINAL WORK MAY INCLUDE OR INCORPORATE ELEMENTS TAKEN  
FROM PRIOR WORKS, FROM THE PUBLIC DOMAIN, AND/OR WORKS OWNED BY  
OTHERS WITH THE OWNER'S PERMISSION. THE ORIGINAL PARTS OF  
PLAINTIFF'S WORK ARE THE PARTS CREATED:

1. INDEPENDENTLY BY THE WORK'S AUTHOR. THAT IS, THE  
AUTHOR DID NOT COPY IT FROM ANOTHER WORK.

2. BY USE OF AT LEAST SOME MINIMAL CREATIVITY.

IN COPYRIGHT LAW, THE ORIGINAL PART OF THE WORK NEED NOT  
BE NEW OR NOVEL.

AN OWNER IS ENTITLED TO COPYRIGHT PROTECTION OF A  
COMPILATION. A "COMPILATION" IS A WORK FORMED BY THE  
COLLECTION AND ASSEMBLING OF PRE-EXISTING MATERIALS OR OF DATA  
THAT ARE SELECTED, COORDINATED, OR ARRANGED IN SUCH A WAY THAT  
THE RESULTING WORK AS A WHOLE CONSTITUTES AN ORIGINAL WORK OF  
AUTHORSHIP.

THE OWNER OF A COMPILATION MAY ENFORCE THE RIGHT TO

09:24:53 1 EXCLUDE OTHERS IN AN ACTION FOR COPYRIGHT INFRINGEMENT.

09:24:59 2 THE CREATOR OF AN ORIGINAL WORK IS CALLED THE AUTHOR OF  
09:25:05 3 THAT WORK. AN AUTHOR ORIGINATES OR MASTERMINDS THE ORIGINAL  
09:25:09 4 WORK CONTROLLING THE WHOLE WORK'S CREATION AND CAUSING IT TO  
09:25:12 5 COME INTO BEING.

09:25:13 6 A COPYRIGHT OWNER IS ENTITLED TO EXCLUDE OTHERS FROM  
09:25:16 7 COPYING A WORK MADE FOR HIRE. A "WORK MADE FOR HIRE" IS ONE  
09:25:19 8 THAT IS PREPARED BY AN EMPLOYEE AND IS WITHIN THE SCOPE OF  
09:25:23 9 EMPLOYMENT.

09:25:31 10 A COPYRIGHT OWNER IS ENTITLED TO EXCLUDE OTHERS FROM  
09:25:35 11 CREATING DERIVATIVE WORKS BASED ON THE OWNER'S COPYRIGHTED  
09:25:39 12 WORK.

09:25:40 13 THE TERM DERIVATIVE WORK REFERS TO A WORK BASED ON ONE OR  
09:25:43 14 MORE PRE-EXISTING WORKS, SUCH AS A TRANSLATION, MUSICAL  
09:25:49 15 ARRANGEMENT, DRAMATIZATION, FICTIONALIZATION, MOTION PICTURE  
09:25:53 16 VERSION, SOUND RECORDING, ART REPRODUCTION, ABRIDGEMENT,  
09:25:57 17 CONDENSATION, OR ANY OTHER FORM IN WHICH A WORK MAY BE RECAST  
09:26:02 18 OR ADAPTED.

09:26:04 19 ACCORDINGLY, THE OWNER OF A COPYRIGHTED WORK IS ENTITLED  
09:26:08 20 TO EXCLUDE OTHERS FROM RECASTING OR ADAPTING THE COPYRIGHTED  
09:26:12 21 WORK WITHOUT THE OWNER'S PERMISSION.

09:26:18 22 CISCO HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE  
09:26:20 23 EVIDENCE THAT ARISTA COPIED ORIGINAL, PROTECTED ELEMENTS FROM  
09:26:23 24 CISCO'S COPYRIGHTED WORKS.

09:26:26 25 THERE ARE TWO WAYS THAT CISCO CAN MEET ITS BURDEN:

09:26:31 1 FIRST, CISCO MAY ESTABLISH ARISTA'S COPYING THROUGH DIRECT  
09:26:37 2 EVIDENCE. AN EXAMPLE OF DIRECT EVIDENCE WOULD BE AN ADMISSION  
09:26:42 3 BY ARISTA THAT PART OR ALL OF THE WORK WAS COPIED. DIRECT  
09:26:49 4 EVIDENCE MAY ALSO BE THE CREDIBLE TESTIMONY OF A WITNESS WHO  
09:26:53 5 SAW THE WORK BEING COPIED.

09:26:56 6 ALTERNATIVELY, CISCO MAY SHOW THAT ARISTA COPIED FROM  
09:27:01 7 CISCO'S COPYRIGHTED WORKS, THROUGH INDIRECT EVIDENCE BY PROVING  
09:27:05 8 BY A PREPONDERANCE OF THE EVIDENCE THAT ONE, ARISTA HAD ACCESS  
09:27:10 9 TO CISCO'S COPYRIGHTED WORKS.

09:27:12 10 AND TWO, THERE IS VIRTUAL IDENTITY BETWEEN ARISTA'S WORKS  
09:27:17 11 AND THE ORIGINAL PROTECTED ELEMENTS OF CISCO'S WORKS.

09:27:25 12 TO ESTABLISH INDIRECT EVIDENCE OF COPYING, CISCO MUST  
09:27:29 13 PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT ARISTA HAD ACCESS  
09:27:32 14 TO CISCO'S COPYRIGHTED WORKS.

09:27:36 15 YOU MAY FIND THAT ARISTA HAD ACCESS TO CISCO'S WORKS IF  
09:27:40 16 ARISTA HAD A REASONABLE OPPORTUNITY TO VIEW, READ, OR COPY  
09:27:44 17 CISCO'S WORKS BEFORE ARISTA'S WORK WAS CREATED.

09:27:51 18 IF YOU FIND THAT ARISTA DID NOT HAVE ACCESS TO CISCO'S  
09:27:54 19 WORKS, YOU MAY STILL FIND THAT ARISTA COPIED CISCO'S WORKS IF  
09:27:59 20 THERE ARE STRIKING SIMILARITIES BETWEEN THE PROTECTABLE  
09:28:02 21 ELEMENTS OF THE WORKS.

09:28:08 22 TO ESTABLISH INDIRECT EVIDENCE OF COPYING, CISCO MUST  
09:28:12 23 PROVE VIRTUAL IDENTITY IN TWO STEPS. VIRTUAL IDENTITY MEANS  
09:28:17 24 DIFFERING BY NO MORE THAN A TRIVIAL DEGREE.

09:28:22 25 FIRST, CISCO MUST PROVE THAT THERE IS VIRTUAL IDENTITY

09:28:28 1 BETWEEN THE ORIGINAL PROTECTED ELEMENTS OF CISCO'S COPYRIGHTED  
09:28:31 2 WORKS AND THE CORRESPONDING ELEMENTS OF ARISTA'S WORKS THAT  
09:28:36 3 CISCO CLAIMS ARISTA COPIED.

09:28:39 4 IN MAKING THIS COMPARISON, YOU MAY FIND ANY OF THE  
09:28:43 5 FOLLOWING ELEMENTS OF CISCO'S WORKS PROTECTED AS A COMPILATION  
09:28:51 6 IF YOU FIND THEY ARE ORIGINAL.

09:28:54 7 1. THE SELECTION AND ARRANGEMENT OF CISCO'S MULTIWORD  
09:28:57 8 COMMAND LINE EXPRESSIONS.

09:28:59 9 2. THE SELECTION AND ARRANGEMENT OF CISCO'S MODES AND  
09:29:02 10 PROMPTS.

09:29:02 11 3. THE COLLECTION OF CISCO'S SCREEN RESPONSES AND  
09:29:07 12 OUTPUTS.

09:29:07 13 4. THE COLLECTION OF CISCO'S HELP DESCRIPTIONS.

09:29:11 14 5. CISCO'S USER INTERFACES AS A WHOLE AS COMPILATIONS OF  
09:29:17 15 ELEMENTS 1 THROUGH 4.

09:29:19 16 6. EACH OF CISCO'S TECHNICAL MANUALS.

09:29:25 17 IN MAKING THIS COMPARISON, YOU SHOULD NOT CONSIDER THE  
09:29:28 18 FOLLOWING ELEMENTS WHICH ARE NOT PROTECTABLE:

09:29:30 19 1. INDIVIDUAL WORDS USED IN ANY OF THE ASSERTED ELEMENTS.

09:29:36 20 2. ANY SINGLE MULTIWORD COMMAND.

09:29:38 21 3. THE IDEA OR METHOD OF GROUPING OR CLUSTERING COMMANDS  
09:29:42 22 UNDER COMMON INITIAL WORDS, SUCH AS SHOW OR IP.

09:29:54 23 4. ANY COMMAND HIERARCHY.

09:29:56 24 5. SPECIFIC MODES AND SPECIFIC PROMPTS.

09:29:59 25 6. THE IDEA OF A SET PATH WAY THROUGH A SERIES OF MODES.

09:30:03 1 7. THE IDEA OF MAKING CERTAIN COMMANDS AVAILABLE ONLY IN  
09:30:07 2 CERTAIN MODES.

09:30:12 3 8. USE OF COMMAND SYNTAX SUCH AS VERB, OBJECT,  
09:30:17 4 PARAMETERS.

09:30:17 5 THE CHOICE -- I'M SORRY.

09:30:20 6 9. THE CHOICE OF USING A TEXT-BASED USER INTERFACE.

09:30:24 7 10. THE IDEA OF USING MULTIWORD COMMAND EXPRESSIONS TO  
09:30:28 8 MANAGE OR CONFIGURE A DEVICE.

09:30:31 9 11. THE FUNCTION OF ANY ASSERTED FEATURE.

09:30:36 10 12. THE USE OF "?" TO CALL UP HELP DESCRIPTIONS.

09:30:42 11 13. INDIVIDUAL HELP DESCRIPTION PHRASES.

09:30:50 12 14. COMMAND PREFIXES THAT THE USER INTERFACE AUTO  
09:30:53 13 COMPLETES.

09:30:54 14 15. TAB COMPLETIONS.

09:30:57 15 IF CISCO PROVES VIRTUAL IDENTITY BETWEEN THE RELEVANT  
09:31:03 16 PROTECTED ELEMENTS, IT MUST ALSO PROVE THAT AN ORDINARY,  
09:31:07 17 REASONABLE OBSERVER WOULD FIND THE TOTAL CONCEPT AND FEEL OF  
09:31:11 18 ITS COPYRIGHTED WORKS AS A WHOLE TO BE VIRTUALLY IDENTICAL TO  
09:31:15 19 ARISTA'S CHALLENGED WORKS AS A WHOLE.

09:31:19 20 IN MAKING THAT COMPARISON, YOU SHOULD NOT CONSIDER  
09:31:22 21 ELEMENTS THAT ARE NOT ORIGINAL OR ARE NOT PROTECTABLE.

09:31:27 22 AS I PREVIOUSLY INSTRUCTED YOU, CISCO'S WORKS AS A WHOLE  
09:31:31 23 ARE ITS FOUR USER INTERFACES ASSOCIATED WITH ITS FOUR OPERATING  
09:31:37 24 SYSTEMS, AS WELL AS EACH OF CISCO'S ASSERTED TECHNICAL MANUALS.

09:31:44 25 ARISTA'S WORKS, AS A WHOLE, ARE THE USER INTERFACES FOR

09:31:47 1 EACH OF THE ACCUSED ARISTA OPERATING SYSTEMS AS WELL AS EACH OF  
09:31:52 2 ARISTA'S ACCUSED TECHNICAL MANUALS.

09:31:58 3 IF YOU CONCLUDE THAT CISCO HAS PROVEN, WHETHER BY DIRECT  
09:32:03 4 OR INDIRECT EVIDENCE, THAT ARISTA COPIED ORIGINAL, PROTECTED  
09:32:06 5 ELEMENTS OF CISCO'S WORKS, YOU MUST THEN DETERMINE WHETHER THAT  
09:32:12 6 COPYING WAS GREATER THAN DE MINIMUS, THAT IS MORE THAN A  
09:32:19 7 TRIVIAL AMOUNT OF CISCO'S WORKS AS A WHOLE.

09:32:22 8 IN MAKING THIS DETERMINATION, YOU SHOULD CONSIDER THE  
09:32:25 9 QUALITATIVE AS WELL AS THE QUANTITATIVE SIGNIFICANCE OF THE  
09:32:29 10 COPIED PORTION IN RELATION TO CISCO'S WORKS AS A WHOLE.

09:32:37 11 NOW I WILL EXPLAIN WHAT "FAIR USE" MEANS UNDER THE LAW.

09:32:42 12 FOR ARISTA'S FAIR USE DEFENSE.

09:32:45 13 ONE WHO IS NOT THE OWNER OF A COPYRIGHT MAY USE A  
09:32:49 14 COPYRIGHTED WORK IN A REASONABLE WAY UNDER THE CIRCUMSTANCES  
09:32:53 15 WITHOUT THE CONSENT OF THE COPYRIGHT OWNER IF IT WOULD ADVANCE  
09:32:57 16 THE PUBLIC INTEREST. SUCH USE OF A COPYRIGHTED WORK IS CALLED  
09:33:06 17 A FAIR USE.

09:33:07 18 THE OWNER OF A COPYRIGHT CANNOT PREVENT OTHERS FROM MAKING  
09:33:11 19 A FAIR USE OF THE OWNER'S COPYRIGHTED WORKS.

09:33:14 20 IN DETERMINING WHETHER THE USE MADE OF THE WORK WAS FAIR,  
09:33:18 21 YOU SHOULD CONSIDER THE FOLLOWING FACTORS.

- 09:33:21 22 1. THE PURPOSE AND CHARACTER OF THE USE.
- 09:33:25 23 2. THE NATURE OF THE COPYRIGHTED WORK.
- 09:33:28 24 3. THE AMOUNT AND SUBSTANTIALITY OF THE PORTION USED IN  
09:33:34 25 RELATION TO THE COPYRIGHTED WORK AS A WHOLE.

09:33:38 1 4. THE EFFECT OF THE USE UPON THE POTENTIAL MARKET FOR OR  
09:33:42 2 VALUE OF THE COPYRIGHTED WORK.

09:33:45 3 IF YOU FIND THAT ARISTA HAS PROVED BY A PREPONDERANCE OF  
09:33:48 4 THE EVIDENCE THAT IT MADE A FAIR USE OF CISCO'S WORK, YOUR  
09:33:51 5 VERDICT SHOULD BE FOR ARISTA.

09:34:01 6 THE FIRST STATUTORY FACTOR CONCERNS THE PURPOSE AND  
09:34:03 7 CHARACTER OF THE ACCUSED USE.

09:34:05 8 THIS FACTOR INCLUDES THREE ISSUES. WHETHER AND TO WHAT  
09:34:11 9 EXTENT THE ACCUSED USE SERVES A COMMERCIAL PURPOSE, WHICH  
09:34:15 10 WEIGHS AGAINST FAIR USE, VERSUS A NONPROFIT EDUCATIONAL  
09:34:19 11 PURPOSE, WHICH WEIGHS IN FAVOR OF FAIR USE;

09:34:23 12 AND TWO, WHETHER AND TO WHAT EXTENT THE ACCUSED WORK IS  
09:34:29 13 TRANSFORMATIVE, WHICH SUPPORTS FAIR USE.

09:34:32 14 A USE IS TRANSFORMATIVE IF IT ADDS SOMETHING NEW WITH A  
09:34:38 15 FURTHER PURPOSE OR DIFFERENT CHARGE, ALTERING THE FIRST USE  
09:34:42 16 WITH NEW EXPRESSION, MEANING, OR MESSAGE, RATHER THAN MERELY  
09:34:47 17 SUPERSEDING THE OBJECTS OF THE ORIGINAL CREATION.

09:34:52 18 NEW WORKS HAVE BEEN FOUND TRANSFORMATIVE WHEN THEY USE  
09:34:56 19 COPYRIGHTED MATERIAL FOR PURPOSES DISTINCT FROM THE PURPOSE OF  
09:35:00 20 THE ORIGINAL MATERIAL.

09:35:02 21 A USE IS CONSIDERED TRANSFORMATIVE ONLY WHEN THE DEFENDANT  
09:35:07 22 CHANGES THE PLAINTIFF'S COPYRIGHTED WORK OR USES COPYRIGHTED  
09:35:11 23 ELEMENTS FOR A DIFFERENT PURPOSE, SUCH AS THE ORIGINAL WORK IS  
09:35:16 24 TRANSFORMED INTO A NEW CREATION.

09:35:19 25 IN EVALUATING THE FIRST STATUTORY FACTOR, THE EXTENT OF

09:35:23 1 THE COMMERCIAL NATURE OF THE ACCUSED WORK MUST ALSO BE  
09:35:26 2 CONSIDERED. COMMERCIAL USE WEIGHS AGAINST A FINDING OF FAIR  
09:35:31 3 USE. HOWEVER, THE MORE TRANSFORMATIVE THE NEW WORK, THE LESS  
09:35:36 4 WILL BE THE SIGNIFICANCE OF OTHER FACTORS, LIKE COMMERCIALISM,  
09:35:41 5 THAT MAY WEIGH AGAINST A FINDING OF FAIR USE.

09:35:45 6 FINALLY, ALSO RELEVANT TO THE FIRST STATUTORY FACTOR IS  
09:35:50 7 THE PROPRIETY OF ARISTA'S CONDUCT.

09:35:56 8 THE SECOND STATUTORY FACTOR IS THE NATURE OF THE  
09:35:59 9 COPYRIGHTED WORK. THIS FACTOR CONSIDERS THE EXTENT TO WHICH  
09:36:03 10 THE WORK IS INFORMATIONAL OR CREATIVE. THIS FACTOR WEIGHS  
09:36:07 11 AGAINST FAIR USE IF THE WORK IS PURELY CREATIVE AND IT WEIGHS  
09:36:12 12 IN FAVOR OF FAIR USE IF THE WORK IS PURELY INFORMATIONAL OR  
09:36:16 13 FUNCTIONAL.

09:36:17 14 BUT LIKE ALL THINGS IN LIFE, MOST CASES FALL ON A SPECTRUM  
09:36:22 15 IN BETWEEN INFORMATIONAL AND CREATIVE. YOU MUST CONSIDER WHERE  
09:36:26 16 ON THIS SPECTRUM THE WORKS IN THIS CASE FALL.

09:36:33 17 THE THIRD STATUTORY FACTOR IS THE AMOUNT AND  
09:36:37 18 SUBSTANTIALITY OF THE PORTION USED IN RELATIONSHIP TO THE  
09:36:41 19 COPYRIGHTED WORK AS A WHOLE, WHICH CONCERNS HOW MUCH OF THE  
09:36:47 20 OVERALL COPYRIGHTED WORK WAS USED BY THE ACCUSED INFRINGER.

09:36:51 21 ANALYSIS OF THIS FACTOR IS VIEWED IN THE CONTEXT OF  
09:36:55 22 CISCO'S COPYRIGHTED WORKS, WHICH ARE THE FOUR USER INTERFACES  
09:37:00 23 OF IOS, IOS XR, IOS XE AND NX-OS. THE FACT, IF TRUE, THAT A  
09:37:09 24 SUBSTANTIAL PORTION OF AN INFRINGING WORK WAS COPIED VERBATIM,  
09:37:13 25 IS EVIDENCE OF THE QUALITATIVE VALUE OF THE COPIED MATERIAL,



09:37:17 1 BOTH TO THE ORIGINATOR AND TO WHOEVER SEEKS TO PROFIT FROM  
09:37:22 2 MARKETING SOMEONE ELSE'S COPYRIGHTED WORK.

09:37:26 3 WHOLESALE COPYING DOES NOT PRECLUDE FAIR USE PER SE, BUT  
09:37:30 4 IT MILITATES AGAINST A FINDING OF FAIR USE. EVEN A SMALL PART  
09:37:35 5 MAY BE QUALITATIVELY THE MOST IMPORTANT PART OF THE WORK.

09:37:40 6 IF, HOWEVER, THE SECONDARY USER ONLY COPIES AS MUCH AS IS  
09:37:45 7 NECESSARY FOR A TRANSFORMATIVE USE, THEN THIS FACTOR WILL NOT  
09:37:49 8 WEIGH AGAINST HIM OR HER. THE EXTENT OF PERMISSIBLE COPYING  
09:37:54 9 VARIES WITH THE PURPOSE AND CHARACTER OF THE USE, WHICH RELATES  
09:37:58 10 BACK TO THE FIRST FACTOR.

09:38:01 11 IN ASSESSING THIS THIRD FACTOR, BOTH THE QUANTITY OF THE  
09:38:08 12 MATERIAL USED OR THE QUALITY OR IMPORTANCE OF THE MATERIAL  
09:38:10 13 SHOULD BE CONSIDERED.

09:38:14 14 THE FOURTH STATUTORY FACTOR IS THE EFFECT OF THE ACCUSED  
09:38:19 15 INFRINGER'S USE ON THE POTENTIAL MARKET FOR OR VALUE OF THE  
09:38:23 16 COPYRIGHTED WORK. THIS FACTOR MILITATES AGAINST FAIR USE IF  
09:38:28 17 THE ACCUSED USE MATERIALLY IMPAIRS THE COPYRIGHTABILITY OR  
09:38:41 18 VALUE OF THE COPYRIGHTED WORK.

09:38:43 19 THIS IS THE MOST IMPORTANT FACTOR, BUT IT MUST BE WEIGHED  
09:38:45 20 WITH ALL THE OTHER FACTORS AND IS IT NOT NECESSARILY  
09:38:50 21 DISPOSITIVE.

09:38:51 22 THIS FACTOR CONSIDERS WHETHER THE ACCUSED WORK IS OFFERED  
09:38:53 23 OR USED AS A SUBSTITUTE FOR THE ORIGINAL COPYRIGHTED WORK.

09:38:58 24 THIS FACTOR CONSIDERS NOT ONLY THE EXTENT OF ANY MARKET  
09:39:01 25 HARM CAUSED BY THE ACCUSED INFRINGER'S ACTIONS BUT ALSO WHETHER

09:39:04 1 UNRESTRICTED AND WIDESPREAD USE OF THE COPYRIGHTED MATERIALS OF  
09:39:08 2 THE SORT ENGAGED IN BY THE ACCUSED INFRINGER WOULD RESULT IN A  
09:39:12 3 SUBSTANTIALLY ADVERSE IMPACT ON THE POTENTIAL MARKET FOR THE  
09:39:20 4 COPYRIGHTED WORK.

09:39:22 5 IF THE USE OF THE COPYRIGHTED MATERIALS IS TRANSFORMATIVE,  
09:39:27 6 MARKET SUBSTITUTION IS AT LEAST LESS CERTAIN, AND MARKET HARM  
09:39:32 7 MAY NOT BE PRESUMED.

09:39:37 8 YOU MUST CONSIDER EACH OF THE FACTORS I HAVE JUST  
09:39:39 9 IDENTIFIED TO DETERMINE WHETHER OR NOT ARISTA HAS CARRIED ITS  
09:39:43 10 BURDEN OF PROVING THAT ARISTA'S USE OF CISCO'S COPYRIGHTED WORK  
09:39:48 11 IS FAIR USE. NO ONE OF THESE FACTORS IS DETERMINATIVE OF THE  
09:39:55 12 ISSUE OF FAIR USE BY ITSELF. SOME FACTORS MAY WEIGH IN FAVOR  
09:39:59 13 OF FINDING FAIR USE AND SOME MAY WEIGH AGAINST A FINDING OF  
09:40:02 14 FAIR USE.

09:40:03 15 IN ADDITION, EACH FACTOR IS NOT ALWAYS ENTITLED TO EQUAL  
09:40:08 16 WEIGHT. THIS IS NOT A COUNTING EXERCISE WHERE THREE FACTORS IN  
09:40:13 17 FAVOR OF FAIR USE ALWAYS OUTWEIGH ONE FACTOR AGAINST FAIR USE.

09:40:19 18 MOREOVER, THESE ARE NOT THE ONLY FACTORS YOU MAY CONSIDER.  
09:40:23 19 IN DECIDING WHETHER TO CONSIDER ANY OTHER FACTORS BASED ON THE  
09:40:31 20 EVIDENCE AND CIRCUMSTANCES PRESENTED TO YOU IN THIS CASE, YOU  
09:40:33 21 SHOULD BE GUIDED BY THE POLICY UNDERLYING THE FAIR USE  
09:40:37 22 DOCTRINE, WHICH IS TO PERMIT LIMITED COPYING FROM COPYRIGHTED  
09:40:40 23 WORKS IN SPECIFIC CIRCUMSTANCES THAT AUTHORS REASONABLY EXPECT  
09:40:44 24 AND THAT ALLOW PRODUCTIVE USE OF WORK WITHOUT UNFAIRLY  
09:40:53 25 UNDERMINING THE PROTECTION AFFORDED BY COPYRIGHT LAW.

09:41:00 1 AFFIRMATIVE DEFENSE OF MERGER.

09:41:02 2 TO SHOW THAT CISCO'S COPYRIGHTED WORKS ARE SUBJECT TO  
09:41:06 3 MERGER, ARISTA MUST SHOW THAT AT THE TIME CISCO CREATED THE  
09:41:11 4 WORKS, CISCO HAD ONLY ONE WAY OR VERY FEW WAYS TO EXPRESS THE  
09:41:17 5 IDEAS UNDERLYING THE ELEMENTS OF CISCO'S COPYRIGHTED USER  
09:41:21 6 INTERFACES OR TECHNICAL MANUALS. MATERIAL IN AN ORIGINAL WORK,  
09:41:27 7 EVEN MATERIAL THAT SERVES A FUNCTION, IS NOT SUBJECT TO MERGER  
09:41:33 8 AS LONG AS THE AUTHOR HAD MORE THAN A FEW WAYS TO EXPRESS THE  
09:41:37 9 UNDERLYING IDEA.

09:41:38 10 ARISTA HAS THE BURDEN OF PROVING THIS DEFENSE BY A  
09:41:41 11 PREPONDERANCE OF THE EVIDENCE.

09:41:48 12 AFFIRMATIVE DEFENSE OF SCÈNES À FAIRE.

09:41:50 13 SCÈNES À FAIRE IS AN AFFIRMATIVE DEFENSE TO COPYRIGHT  
09:41:54 14 INFRINGEMENT.

09:41:56 15 TO SHOW THAT PORTIONS OF CISCO'S USER INTERFACES ARE  
09:42:00 16 SCÈNES À FAIRE MATERIAL, ARISTA MUST SHOW THAT AT THE TIME  
09:42:03 17 CISCO CREATED THE USER INTERFACES, NOT AT THE TIME OF ANY  
09:42:07 18 COPYING, EXTERNAL FACTORS OTHER THAN CISCO'S CREATIVITY  
09:42:13 19 DICTATED THAT CISCO SELECT, ARRANGE, ORGANIZE AND DESIGN ITS  
09:42:19 20 ORIGINAL FEATURES IN A MANNER IT DID.

09:42:21 21 THE SCÈNES À FAIRE DOCTRINE DEPENDS UPON THE CIRCUMSTANCES  
09:42:25 22 PRESENTED TO THE CREATOR AT THE TIME OF CREATION, NOT THE  
09:42:29 23 CIRCUMSTANCES PRESENTED TO THE COPIER AT THE TIME IT COPIED.

09:42:34 24 ARISTA HAS THE BURDEN OF PROVING THIS DEFENSE BY A  
09:42:37 25 PREPONDERANCE OF THE EVIDENCE.

09:42:40 1 AFFIRMATIVE DEFENSE OF COPYRIGHT MISUSE.

09:42:43 2 ARISTA CLAIMS IT IS NOT LIABLE FOR COPYRIGHT INFRINGEMENT  
09:42:48 3 BECAUSE CISCO MISUSED ITS COPYRIGHTS.

09:42:51 4 WHILE THE COPYRIGHT ACT GIVES A COPYRIGHT OWNER A LIMITED  
09:42:56 5 MONOPOLY IN A COPYRIGHTED WORK, THE OWNER'S ATTEMPTS TO EXTEND  
09:42:59 6 THE SCOPE OF THIS MONOPOLY MAY NOT, UNDER CERTAIN  
09:43:04 7 CIRCUMSTANCES, CONSTITUTE MISUSE.

09:43:07 8 I'M SORRY, LET ME REREAD THAT.

09:43:10 9 WHILE THE COPYRIGHT ACT GIVES A COPYRIGHT OWNER A LIMITED  
09:43:12 10 MONOPOLY IN A COPYRIGHTED WORK, THE OWNER'S ATTEMPT TO EXTEND  
09:43:17 11 THE SCOPE OF THIS MONOPOLY MAY, UNDER CERTAIN CIRCUMSTANCES,  
09:43:21 12 CONSTITUTE MISUSE.

09:43:23 13 IF YOU FIND THAT CISCO MISUSED ITS COPYRIGHTS, IT CANNOT  
09:43:27 14 ASSERT AN INFRINGEMENT CLAIM AGAINST ARISTA.

09:43:31 15 TO PREVAIL UPON ITS CLAIM THAT CISCO MISUSED ITS  
09:43:36 16 COPYRIGHTS, ARISTA MUST PROVE THAT CISCO ATTEMPTED TO USE THE  
09:43:41 17 EXISTENCE OF ITS COPYRIGHTS TO PREVENT ARISTA FROM USING  
09:43:46 18 UNPROTECTED ELEMENTS OF THE COPYRIGHTED WORK, OR TO PREVENT  
09:43:54 19 ARISTA FROM UNDER TAKING ACTIVITY SAVE GUARDED BY PUBLIC  
09:43:57 20 POLICY, SUCH AS THE POLICIES SUPPORTING FAIR USE.

09:44:00 21 ARISTA HAS THE BURDEN OF PROOF TO ESTABLISH CISCO'S  
09:44:02 22 COPYRIGHT MISUSE BY A PREPONDERANCE OF THE EVIDENCE.

09:44:08 23 AFFIRMATIVE DEFENSE OF ABANDONMENT.

09:44:11 24 ARISTA CONTENDS THAT A COPYRIGHT DOES NOT EXIST IN CISCO'S  
09:44:15 25 WORKS BECAUSE CISCO ABANDONED THE COPYRIGHTS. CISCO CANNOT

CLAIM OWNERSHIP OF THE COPYRIGHT IF IT WAS ABANDONED.

IN ORDER TO SHOW ABANDONMENT, ARISTA HAS THE BURDEN OF PROVING EACH OF THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. CISCO INTENDED TO SURRENDER RIGHTS IN THE WORK.

2. AN ACT BY CISCO EVIDENCING THAT INTENT.

MERE INACTION DOES NOT CONSTITUTE ABANDONMENT OF THE COPYRIGHT. HOWEVER, THIS MAY BE A FACTOR FOR YOU TO CONSIDER IN DETERMINING WHETHER CISCO HAS ABANDONED THE COPYRIGHT.

IT IS THE DUTY OF THE COURT TO INSTRUCT YOU ABOUT THE MEASURE OF DAMAGES. BY INSTRUCTING YOU ON DAMAGES, THE COURT DOES NOT MEAN TO SUGGEST FOR WHICH PARTY YOUR VERDICT SHOULD BE RENDERED.

IF YOU FIND FOR CISCO ON ITS COPYRIGHT INFRINGEMENT CLAIM, YOU MUST DETERMINE CISCO'S DAMAGES.

CISCO IS ENTITLED TO RECOVER THE ACTUAL DAMAGES SUFFERED AS A RESULT OF THE INFRINGEMENT. IN ADDITION, CISCO IS ALSO ENTITLED TO RECOVER ANY OF ARISTA'S PROFITS ATTRIBUTABLE TO THE INFRINGEMENT, TO THE EXTENT YOU DID NOT ALREADY ACCOUNT FOR THOSE PROFITS IN DETERMINING CISCO'S ACTUAL DAMAGES.

CISCO MUST PROVE ITS DAMAGES BY A PREPONDERANCE OF THE EVIDENCE. IT IS FOR YOU TO DETERMINE WHAT DAMAGES, IF ANY, HAVE BEEN PROVED. YOUR AWARD MUST BE BASED UPON EVIDENCE AND NOT UPON SPECULATION, GUESSWORK OR CONJECTURE.

CISCO IS ENTITLED TO RECOVER THE ACTUAL DAMAGES SUFFERED

11:22:24 1 WE WILL COME BACK.

11:22:27 2 (RECESS FROM 11:22 A.M. UNTIL 11:27 A.M.)

11:22:47 3 THE COURT: ALL OF OUR JURORS ARE HERE.

11:28:27 4 MR. VAN NEST, WOULD YOU LIKE TO GIVE YOUR CLOSING  
11:28:30 5 ARGUMENT?

11:28:30 6 MR. VAN NEST: I WOULD, YOUR HONOR.

11:28:31 7 THE COURT: GO AHEAD, PLEASE.

11:28:32 8 MR. VAN NEST: THANK YOU VERY MUCH.

11:28:33 9 **CLOSING ARGUMENTS BY MR. VAN NEST**

11:28:35 10 GOOD MORNING, LADIES AND GENTLEMEN, I'M VERY HAPPY TO BE  
11:28:38 11 UP HERE AND VERY PROUD TO BE HERE ON BEHALF OF ARISTA NETWORKS.

11:28:41 12 I WANT TO THANK YOU FIRST FOR BEING SUCH DILIGENT JURORS.  
11:28:44 13 WE REALLY DO APPRECIATE YOUR SERVICE. I KNOW WITH THE HOLIDAYS  
11:28:47 14 COMING UP, EVERYBODY HAS BUSY LIVES AND WE APPRECIATE THE FACT  
11:28:51 15 THAT YOU HAVE BEEN HERE TIMELY AND PAYING ATTENTION EVERY DAY,  
11:28:53 16 THAT'S VERY IMPORTANT.

11:28:54 17 I TOLD YOU A COUPLE OF WEEKS AGO, THIS DISPUTE IS VERY  
11:28:59 18 IMPORTANT, NOT ONLY FOR ARISTA, BUT FOR TECHNOLOGY AND  
11:29:05 19 INNOVATION TOO, BECAUSE CISCO IS TRYING TO CHANGE ALL THE RULES  
11:29:08 20 AROUND TECHNOLOGY AND INNOVATION, ESPECIALLY IN NETWORKING.

11:29:12 21 NOW YOU'VE HEARD TESTIMONY NOT ONLY FROM THE ARISTA  
11:29:15 22 LEADERSHIP AND THE ENGINEERS AT ARISTA, BUT ALSO FROM THIRD  
11:29:19 23 PARTIES, DELL, JUNIPER, HEWLETT-PACKARD, THEY CAME AS WELL.  
11:29:26 24 AND KEY TESTIMONY FROM FORMER CISCO MANAGERS LIKE MR. VOLPI,  
11:29:29 25 AND MR. GIANCARLO, ALONG WITH FORMER CISCO ENGINEERS, TONY LI,

DOUG GOURLAY AND DEVADAS PATIL.

AND TOGETHER, THE TESTIMONY OF THESE WITNESSES WAS VERY CLEAR, VERY CONSISTENT, AND EXPLAINED WHAT ACTUALLY WENT ON IN THE MARKET PLACE WE ARE TALKING ABOUT, SOMETHING WHICH CISCO WANTS TO AND DID IN THEIR CLOSING ARGUMENT, COMPLETELY IGNORE.

THAT TESTIMONY TAKEN AS A GROUP, PROVES THAT THE ARISTA SWITCH WAS BUILT BY ARISTA ENGINEERS USING ARISTA TECHNOLOGY AND MILLIONS OF LINES OF ORIGINAL SOURCE CODE, NOT ONE LINE OF WHICH WAS COPIED FROM CISCO. IT'S NOW UNDISPUTED. NO EVIDENCE THAT ANY OF THE SOURCE CODE CREATED IN THIS SWITCH WAS COPIED. AND IT'S COMPLETELY DIFFERENT, AS YOU HEARD, FROM IOS, THE CISCO VERSION OF ITS SOFTWARE.

AS MR. DUDA AND MR. HOLBROOK EXPLAINED, IT'S THAT SOFTWARE WORKING WITH THE HARDWARE THAT MAKES THIS SWITCH SO SUCCESSFUL, AND BOY HAS IT BEEN SUCCESSFUL. IT'S BEEN PHENOMENAL AND SUCCESSFUL IN THE MARKETPLACE.

THEY'VE CHANGED EVERYTHING BECAUSE THIS IS A MAJOR MARKET TRANSITION TO THE CLOUD, RIGHT, AND IT'S BEING LEAD BY ARISTA AND ARISTA'S PRODUCTS.

AS WE SAID, UNDISPUTED NOW, TEN TIMES FASTER, MORE RELIABLE, MORE PORTS. SO IT CAN HANDLE MORE STUFF, USES LESS POWER. WHY, OTHERWISE, WOULD PEOPLE LIKE GOOGLE, MICROSOFT, FACEBOOK, THE LEADING TECHNOLOGY, COMPANIES IN OUR COMMUNITY, WHY WOULD THEY BE USING THIS SWITCH IF IT HADN'T BEEN FOR THAT?

AND ARISTA DID IT WITH JUST A FEW HUNDRED ENGINEERS

11:31:21 1 COMPETING WITH COMPANIES 20 TIMES THEIR SIZE. CISCO HAD 75,000  
11:31:27 2 EMPLOYEES, HAD ABOUT 1400.

11:31:28 3 EVEN CISCO RECOGNIZES, AND WE WILL REVIEW THE EVIDENCE IN  
11:31:31 4 DETAIL IN JUST A MINUTE, BECAUSE THIS IS WHERE I WANT TO START,  
11:31:34 5 THEY RECOGNIZE THIS AS TRANSFORMATIVE. THEY CALL IT A NEW  
11:31:37 6 PARADIGM. MR. CHAMBERS SPENT A BILLION DOLLARS TRYING TO CATCH  
11:31:42 7 UP TO IT THROUGH INSIEME, AND HIS MANAGERS TOLD HIM ARISTA IS  
11:31:46 8 OUTPERFORMING US ON PRODUCT, ROAD MAP AND VISION, RIGHT? ALL  
11:31:51 9 IN THE EVIDENCE THAT WE ARE GOING TO REVIEW.

11:31:53 10 NOW, THERE'S ALSO NO DISPUTE, THEY SPENT A LOT OF TIME ON  
11:31:58 11 COPYING. THERE'S NEVER BEEN A DISPUTE THAT ARISTA DESIGNED ITS  
11:32:03 12 SWITCHES TO RECOGNIZE A SMALL FRACTION OF THE COMMAND LINES IN  
11:32:08 13 IOS. CISCO'S IOS HAS 16,000 OF THESE COMMAND LINES, 16,000.  
11:32:14 14 AND ARISTA SWITCHES WERE DESIGNED TO USE SOME OF THOSE.

11:32:19 15 ARISTA, LIKE EVERYBODY ELSE IN THE INDUSTRY, BELIEVED THAT  
11:32:24 16 CISCO HAD MADE THESE LINES AVAILABLE, MADE THEM AVAILABLE AS AN  
11:32:28 17 INDUSTRY STANDARD. AND SO ARISTA, LIKE EVERYONE ELSE, COPIED  
11:32:33 18 SOME OF THE COMMAND LINES TO USE IN ITS PROTECTS.

11:32:36 19 BUT, THAT'S NOT A SECRET, IT'S NEVER BEEN A SECRET. YOU  
11:32:41 20 SAW THE EVIDENCE IN THEIR CLOSING ARGUMENT. ARISTA, FROM DAY  
11:32:44 21 ONE, HAS BEEN SAYING WE ARE CISCO-LIKE, WE ARE IOS-LIKE. THEY  
11:32:47 22 DID IT IN BLOGS, THEY DID IT IN DATA SHEETS, THEY DID IN  
11:32:53 23 CONFERENCES, IT WAS OPEN AND WIDELY KNOWN. THAT'S BECAUSE  
11:32:58 24 NOBODY AT ARISTA, MANY OF WHOM HAD WORKED AT CISCO, THOUGHT  
11:33:00 25 THERE WAS NOTHING WRONG WITH THAT.



11:33:02 1 AND GUESS WHAT? CISCO DIDN'T THINK THERE WAS ANYTHING  
11:33:04 2 WRONG WITH THAT EITHER. CISCO KNEW FROM DAY ONE WHAT COMMAND  
11:33:09 3 LINE REFERENCES ARISTA WAS USING. THEY BOUGHT A SWITCH EARLY  
11:33:12 4 ON, THEY ANALYZED IT, THEY STUDIED IT.

11:33:14 5 YOU SAW THAT EVIDENCE, MR. GOURLAY TESTIFIED THAT AS EARLY  
11:33:17 6 AS 2009, ALL THE FOLKS AT CISCO WERE AWARE OF THE COMMAND-LINE  
11:33:23 7 INTERFACE THAT ARISTA WAS USING, AND YET, DID THEY COMPLAIN?  
11:33:26 8 NO. NO COMPLAINT WHATSOEVER. '09, '10, '11, '12, 2013, NO  
11:33:31 9 COMPLAINT. WHY? BECAUSE AS THE EVIDENCE SHOWS OVERWHELMINGLY,  
11:33:36 10 AND WE ARE GOING TO REVIEW THIS TOO, LONG BEFORE ARISTA CAME  
11:33:38 11 ALONG, CISCO WAS PROMOTING ITS OWN CLI AS INDUSTRY STANDARD.

11:33:45 12 THEY PROMOTED IT IN THEIR OWN DATA SHEETS, THEY PROMOTED  
11:33:49 13 IT AT THEIR USER CONFERENCES, THEY PROMOTED IT IN WHITE PAPERS,  
11:33:54 14 THEY PROMOTED IT TO EVERYONE. AND GUESS WHAT? NOW WE KNOW  
11:33:56 15 WHY. MR. VOLPI AND MR. GIANCARLO TOLD US, THEY TESTIFIED THAT  
11:34:01 16 CISCO MADE A CONSCIENCE BUSINESS DECISION TO ALLOW OTHERS TO  
11:34:06 17 COPY THEIR CLI BECAUSE CUSTOMERS WANTED IT AND BECAUSE IT  
11:34:11 18 ALLOWED CISCO TO SAY EVERYONE ELSE IS FOLLOWING US, WE ARE THE  
11:34:16 19 LEADER.

11:34:17 20 MR. GIANCARLO SAID NO ONE AT CISCO THOUGHT THAT THESE WERE  
11:34:20 21 EVEN PROTECTABLE, AND THEREFORE BOTH MR. VOLPI AND  
11:34:25 22 MR. GIANCARLO, TWO OF THE MOST SENIOR LEADERS AT CISCO, RIGHT  
11:34:29 23 UNDERNEATH MR. CHAMBERS, THEY BOTH TESTIFIED IN AN UNIMPEACHED  
11:34:35 24 WAY, THEY DIDN'T EVEN -- CISCO'S LAWYERS NEVER EVEN TOUCHED  
11:34:39 25 THIS, THAT THIS WAS A CONSCIENCE DECISION.

11:34:42 1 NOW WHAT THEN HAPPENED, ALL THE TOP PLAYERS IN THE MARKET  
11:34:45 2 USED SOME NUMBER OF COMMANDS, THEY ALL DID. HP DID, JUNIPER IN  
11:34:51 3 ITS JUNOS-E PRODUCT DID, DELL DID. AS A MATTER OF FACT, THE  
11:34:56 4 ONLY PRODUCT THAT DR. BLACK WAS ABLE TO ANALYZE FULLY, THE DELL  
11:35:00 5 PRODUCT, HAD 1600 COMMANDS THAT OVERLAP. NOT 500, 1600 IN  
11:35:07 6 DELL.

11:35:09 7 AND THAT'S PROBABLY TRUE FOR THE WHOLE REST OF THE GROUP,  
11:35:12 8 TOO. WE SIMPLY WEREN'T ABLE TO ANALYZE EVERYBODY'S MANUALS AND  
11:35:16 9 ALL OF THAT MOUNTAIN OF MATERIAL.

11:35:19 10 NOW, TONY LI TESTIFIED THAT HIS COMPANY BUILT A SWITCH TO  
11:35:25 11 COMPETE DIRECTLY WITH CISCO AND HE BUILT HIS CLI BUG-TO-BUG  
11:35:29 12 COMPATIBLE. BUG-TO-BUG COMPATIBLE WITH CISCO.

11:35:33 13 CISCO DIDN'T COMPLAIN, IT WAS CONSISTENT WITH THEIR  
11:35:35 14 BUSINESS PLAN, THEY WERE AN INVESTOR, IT WAS CONSISTENT WITH  
11:35:39 15 THEIR DECISION TO MAKE THESE PUBLIC, MAKE THEM AN INDUSTRY  
11:35:42 16 STANDARD AND BRAG ABOUT THAT, WHICH THEY DID REPEATEDLY.

11:35:45 17 NOW WHAT ARE THEY PRESENTING YOU AS A BASIS FOR THE LAWS,  
11:35:51 18 NOTHING HAVING TO DO WITH THE ORIGINAL SOURCE CODE IN HERE,  
11:35:53 19 NOTHING. THEY ARE PRESENTING A MANUAL TYPED-IN COMMAND ENTRY  
11:35:57 20 SYSTEM THAT IS 40 YEARS OLD. 40 YEARS OLD. THAT'S WHAT WE ARE  
11:36:02 21 HERE TALKING ABOUT. SOMETHING THAT EVERYBODY ACKNOWLEDGES WAS  
11:36:06 22 CREATED IN THE 70'S, AND MR. LOUGHEED DIDN'T START ON UNTIL THE  
11:36:14 23 80'S AT CISCO, BUT THESE COMMAND-LINE INTERFACES ARE SIMPLE,  
11:36:17 24 TWO TO FOUR-WORD DESCRIPTIONS OF COMMANDS THAT ARE STANDARD IN  
11:36:20 25 THE INDUSTRY.

11:36:21 1 THEY COME FROM LEGACY SYSTEMS, THEY USE TERMS THAT ARE  
11:36:26 2 PART OF INDUSTRY STANDARD PROTOCOLS TO DESCRIBE THOSE  
11:36:31 3 PROTOCOLS, AND THEY ARE NOT CREATIVE.

11:36:33 4 LET'S GET REAL. THE ENGINEERS AT CISCO WERE TOLD, DO NOT  
11:36:37 5 BE CREATIVE WITH THESE. IF THERE'S AN INDUSTRY STANDARD TERM,  
11:36:40 6 USE IT. USE SOMETHING FAMILIAR. USE SOMETHING EVERYBODY  
11:36:46 7 ALREADY KNOWS.

11:36:47 8 THESE ARE SUPPOSED TO BE SELF-EXPLANATORY. WE ARE GOING  
11:36:50 9 TO INNOVATE INSIDE THE PRODUCT. WE ARE NOT GOING TO INNOVATE  
11:36:56 10 WITH A 40-YEAR OLD COMMAND-LINE INTERFACE THAT ALL THE  
11:36:58 11 CUSTOMERS ARE USING.

11:37:00 12 SO THE EVIDENCE WILL SHOW OVERWHELMINGLY THAT THERE HAS  
11:37:03 13 BEEN NO INFRINGEMENT OF ANY CISCO INTELLECTUAL PROPERTY,  
11:37:08 14 NOTHING THAT THE ARISTA ENGINEERS USE FROM THE COMMAND-LINE  
11:37:12 15 INTERFACE WAS PROTECTABLE IN THE FIRST PLACE, BECAUSE IT'S NOT  
11:37:15 16 ORIGINAL, IT'S NOT CREATIVE OR THE LAW DOESN'T PROTECT IT, AND  
11:37:18 17 THEY HAVEN'T PROVED PATENT INFRINGEMENT BY A MILE.

11:37:22 18 AND THE EVIDENCE WILL SHOW THAT ARISTA'S USE OF THESE, OF  
11:37:26 19 A VERY SMALL FRACTION OF COMMAND LINES WAS FAIR, REASONABLE,  
11:37:33 20 CONSISTENT WITH CISCO'S BUSINESS PRACTICES AT THE TIME, AND HAS  
11:37:37 21 CAUSED CISCO NO HARM WHATSOEVER. THEY ARE CLAIMING HARM TO  
11:37:41 22 THEIR CLI, THIS 40-YEAR OLD TECHNOLOGY.

11:37:44 23 TO THE EXTENT CISCO HAS FALLEN BEHIND, IT'S BECAUSE THEY  
11:37:47 24 MISSED THE TRANSITION TO THE CLOUD, AS MR. CHAMBERS CANDIDLY  
11:37:50 25 ADMITTED LAST MONDAY. THEY MISSED THE TRANSITION, THEY WERE

11:37:54 1 BEHIND.

11:37:54 2 SO TO THE EXTENT THEY ARE SUFFERING, IT HAS NOTHING TO DO  
11:37:57 3 WITH THE FACT THAT ARISTA IS USING THE SAME COMMANDS THAT  
11:38:03 4 EVERYBODY ELSE IN THE INDUSTRY IS USING.

11:38:08 5 SO LET ME GO TO MY KEY POINTS OF EVIDENCE, AND AS  
11:38:11 6 JUDGE FREEMAN TOLD YOU, WE ARE GOING TO TALK HERE UNTIL LUNCH  
11:38:14 7 TIME AND FINISH UP.

11:38:15 8 I WANT TO START HERE THAT ARISTA SWITCHES WERE DESIGNED  
11:38:18 9 FROM SCRATCH, NOT COPIED FROM CISCO. THAT'S NOT DISPUTED AND  
11:38:23 10 THOSE SWITCHES ARE REVOLUTIONARY TOO.

11:38:25 11 CISCO PROMOTED ITS CLI AS AN INDUSTRY STANDARD FOR ITS OWN  
11:38:29 12 BENEFIT. THERE'S ENORMOUS AMOUNT OF EVIDENCE ON THAT. WE SAT  
11:38:34 13 EVERY SINGLE DAY WITH EVERY SINGLE WITNESS, WE SAW EVIDENCE  
11:38:38 14 THAT CISCO WAS PROMOTING THESE AS INDUSTRY STANDARD.

11:38:42 15 THIRD, COPYING UN PROTECTABLE ELEMENTS OF THE CLI IS NOT  
11:38:45 16 INFRINGEMENT. WE HEARD TWO WEEKS OF TESTIMONY FROM CISCO ABOUT  
11:38:50 17 THESE COMMAND LINES, JUDGE FREEMAN HAS TOLD YOU THESE  
11:38:55 18 INDIVIDUAL COMMAND LINES, THE MULTIWORD COMMAND LINES THAT WE  
11:38:59 19 ARE TALKING ABOUT, THEY ARE NOT EVEN PROTECTABLE BY LAW, NOT  
11:39:02 20 EVEN PROTECTABLE. THEY HAVEN'T PROVEN THAT THEY HAVE SOME  
11:39:07 21 UNIQUE COMPILATION OF THESE, NOT BY A MILE.

11:39:10 22 AND FINALLY, ARISTA'S USE OF THE IOS CLI IS A FAIR USE  
11:39:13 23 CONSISTENT WITH INDUSTRY PRACTICES.

11:39:16 24 BY THE WAY, "FAIR USE" LOOKS TO THE PUBLIC INTEREST. I  
11:39:19 25 HEARD IT CALLED AN EXCUSE. IT'S IN THE COPYRIGHT STATUTE. IT

11:39:23 1 HAS THE SAME STATURE AND IMPORTANCE AS THE COPYRIGHT LAW  
11:39:28 2 ITSELF, IT'S PART OF THE COPYRIGHT LAW.

11:39:30 3 AND OUR POINT THERE IS THAT THE NETWORKING INDUSTRY HAS  
11:39:33 4 BEEN USING THESE COMMANDS FOR YEARS AND YEARS WITH NO COMPLAINT  
11:39:38 5 FROM CISCO WHATSOEVER.

11:39:40 6 ALL RIGHT. LET'S START ON POINT ONE. WE HAVE BEEN  
11:39:44 7 TALKING ABOUT TRANSFORMATIVE USE AND NOW YOU HAVE A DEFINITION.  
11:39:47 8 AND IT DOESN'T MEAN, IT'S NOT LIMITED TO TRANSFORMING JUST THE  
11:39:51 9 CLI, ALTHOUGH THE ENGINEERS AT ARISTA DID THAT. A USE IS  
11:39:55 10 TRANSFORMATIVE IF IT ADDS SOMETHING NEW WITH A FURTHER PURPOSE  
11:39:59 11 OR DIFFERENT CHARGE, ALTERING THE FIRST WITH NEW EXPRESSION,  
11:40:03 12 MEANING OR MESSAGE. OKAY.

11:40:06 13 WHAT'S TRANSFORMATIVE? WHAT'S TRANSFORMATIVE IS USING  
11:40:10 14 THESE CLI'S, AS DR. BLACK DESCRIBED IT, TAKING A SMALL FRACTION  
11:40:16 15 OF WHAT'S IN IOS, CREATING A BRAND-NEW SWITCH WITH NEW SOURCE  
11:40:21 16 CODE, NEW FEATURES, THOUSANDS OF ARISTA'S OWN NEW COMMANDS, FOR  
11:40:26 17 HIGH SPEED NETWORKING IN THE CLOUD, THAT'S WHAT WE ARE TALKING  
11:40:29 18 ABOUT. AND THAT IS TRANSFORMATIVE IN THE LAW.

11:40:34 19 OUR NEXT SLIDE REMINDS US WHY THE CLI HAVE TO BE  
11:40:37 20 TRANSFORMED TO WORK IN THE CLOUD. WHEN YOU HAVE HUNDREDS OF  
11:40:40 21 THOUSANDS OF SERVERS AND MAYBE DOZEN -- TENS OF THOUSANDS OF  
11:40:46 22 SWITCHES, YOU CAN'T ENTER THEM MANUALLY WITH THE CLI, IT'S GOT  
11:40:50 23 TO BE FULLY AUTOMATED, WHICH IS WHAT THE FOLKS AT ARISTA DID.  
11:40:54 24 DOES NOT WORK ANYMORE.

11:40:55 25 NEXT SLIDE.

11:40:57 1 WHY ARE GOOGLE, FACEBOOK AND MICROSOFT USING THESE?  
11:41:00 2 RIGHT? WHY IS ARISTA LEADING THE MARKET THERE? BECAUSE THESE  
11:41:04 3 ARE THE MOST ADVANCED TECHNOLOGY COMPANIES AND THEY NEED THE  
11:41:07 4 MOST ADVANCED WAY TO DO IT.

11:41:09 5 MR. CHAMBERS MAY BE THE BEST WITNESS TO HOW BIG A CHANGE  
11:41:13 6 THIS IS, RIGHT. HE SAID DURING HIS EXAMINATION ON MONDAY,  
11:41:16 7 THERE'S A MARKET TRANSITION UNDER WAY IN NETWORKING. HE  
11:41:19 8 COMPARED IT TO THE CHANGE WHEN VOICE OVER INTERNET CAME IN, HE  
11:41:24 9 COMPARED IT TO THE CHANGE WITH VIDEO OVER INTERNET CAME IN.  
11:41:28 10 BIG DEAL. A VERY IMPORTANT ONE, YES.

11:41:31 11 AND WHO IS THE MARKET LEADER IN THAT MARKET TRANSITION?  
11:41:35 12 THIS SWITCH RIGHT HERE. AND I WILL TALK IN DETAIL ABOUT EACH  
11:41:38 13 OF THESE IN JUST A MINUTE. BUT YOU'VE HEARD ALL THE WITNESSES  
11:41:41 14 TESTIFY THAT THERE ARE AUTOMATION TOOLS THAT CHANGE HOW THE CLI  
11:41:45 15 IS USED, IT'S MORE RELIABLE BECAUSE OF THE ARCHITECTURE, IT'S  
11:41:49 16 HIGHER SPEED, TEN TIMES FASTER, IT'S POWER EFFICIENT USE, IT IS  
11:41:57 17 1/5TH THE POWER.

11:41:58 18 AND OPEN PROGRAMMABLE IS KEY TOO BECAUSE IT PROVIDES A  
11:42:00 19 PLATFORM THAT CUSTOMERS CAN ADAPT AND PROGRAM ON TOP OF.

11:42:05 20 THIS DIDN'T HAPPEN OVERNIGHT, AS YOU SAW, THE TESTIMONY  
11:42:08 21 FILLED IN THAT THERE ARE 6 MILLION LINES OF CODE INSIDE THE EOS  
11:42:12 22 SOFTWARE. 650 ENGINEERS, THAT'S NOT AN ARMY, BUT THAT'S ENOUGH  
11:42:18 23 TO DO WHAT THEY DID, AND \$750 MILLION IN RESEARCH AND  
11:42:23 24 DEVELOPMENT.

11:42:24 25 ALL RIGHT. WHAT IS SO TRANSFORMATIVE ABOUT THIS? YOU

11:42:27 1 HEARD THAT FROM DR. BLACK, YOU HEARD IT FROM MR. DUDA, YOU  
11:42:31 2 HEARD IT FROM MR. HOLBROOK.

11:42:33 3 LET ME START WITH MR. DUDA. REMEMBER HE DREW THIS DIAGRAM  
11:42:36 4 AND HE SAID WANTED TO START WITH A COMPLETELY DIFFERENT AND NEW  
11:42:40 5 ARCHITECTURE. SO IT'S A DISTRIBUTED ARCHITECTURE. IT HAS A  
11:42:45 6 CENTRAL DATABASE, BUT IT HAS DISTRIBUTED FEATURES ON THE  
11:42:48 7 OUTSIDE WHICH YOU HAVE TO HAVE FOR RELIABILITY IN THESE  
11:42:51 8 ENORMOUS DATA CENTERS.

11:42:54 9 WHAT HE SAID IS DOING IT THIS WAY IS IF ONE PROCESS GOES  
11:42:57 10 OUT, THE WHOLE THING DOESN'T GO OUT. IT'S ALSO EASIER TO  
11:43:00 11 UPDATE, EASIER TO CHANGE, YOU CAN TAKE A FEATURE OUT AND  
11:43:03 12 REPLACE IT ON THE FLY. AND THEN HE SAID WE TOOK THIS  
11:43:07 13 ARCHITECTURE AND WE PUT IS IT ON A LINUX KERNEL.

11:43:11 14 NOW LINUX IS AN OPEN SOURCE SOFTWARE THAT SOFTWARE  
11:43:13 15 DEVELOPERS ARE USED TO USING. IT'S AN OPERATING SYSTEM, IT'S A  
11:43:17 16 BASE. WHAT DOES THAT MEAN? IT FREES UP CUSTOMERS FROM THESE  
11:43:22 17 PROPRIETARY SYSTEMS.

11:43:24 18 REMEMBER WHEN APPLE FIRST CAME OUT WITH THE IPHONE, THAT  
11:43:28 19 WAS IT, YOU COULDN'T PUT APPS ON IT FROM ANYBODY OTHER THAN  
11:43:31 20 APPLE, IT WAS A CLOSED SYSTEM, PROPRIETARY. THAT'S HOW  
11:43:35 21 SWITCHES HAVE BEEN FOREVER. THAT'S HOW THE CISCO SWITCHES HAVE  
11:43:38 22 BEEN FOREVER. ARISTA OPENED THAT UP WITH LINUX SOFTWARE,  
11:43:41 23 DEVELOPERS CAN REDESIGN THE SWITCH TO MAKE IT BETTER AND MAKE  
11:43:44 24 IT MORE SUITABLE FOR THEIR NEEDS.

11:43:47 25 NOW AFTER MR. DUDA, YOU HEARD FROM MR. HOLBROOK. HE

11:43:50 1 BROUGHT THIS CIRCUIT BOARD TO EXPLAIN A COUPLE OF KEY THINGS.  
11:43:54 2 ONE, HE SAID WE WERE THE FIRST TO PUT SIX OF THESE VERY  
11:44:00 3 POWERFUL PROCESSORS ON THE SAME BOARD. THE MANUFACTURER SAID  
11:44:05 4 IT COULDN'T BE DONE, CUSTOMERS SAID IT COULDN'T BE DONE, BUT  
11:44:10 5 THEY DID IT.

11:44:11 6 AND WHAT DID THAT MEAN? THEY PACKED THE SWITCH WITH POWER  
11:44:15 7 WHICH MEANT THEY COULD PUT MORE PORTS ON THEM. THAT'S HOW  
11:44:18 8 ARISTA GOT TO THESE BIG NUMBERS OF PORTS AND BIG NUMBERS OF  
11:44:22 9 CAPACITY BY DESIGNING THIS BOARD WITH ALL THAT POWER.

11:44:25 10 AND YOU REMEMBER THE OTHER FEATURE THAT MR. HOLBROOK  
11:44:28 11 TALKED ABOUT WAS THE ZERO TOUCH PROVISIONING. YOU ARE NOT  
11:44:32 12 TOUCHING THE CLI. WHY IS THAT IMPORTANT? THAT MEANS THAT IN  
11:44:36 13 ONE OF THESE BIG DATA CENTERS WE LOOKED AT, ONE OF THE CLOUD  
11:44:39 14 CENTERS, A CUSTOMER CAN SET IT UP AND GET IT UP AND RUNNING, I  
11:44:44 15 THINK MR. HOLBROOK SAID TWO HOURS, TWO HOURS, WHAT USED TO TAKE  
11:44:48 16 TWO WEEKS.

11:44:50 17 THAT IS REALLY REMARKABLE. AND THAT'S THE KIND OF  
11:44:53 18 PERFORMANCE THAT THESE CHANGES HAVE BROUGHT ABOUT FOR  
11:44:56 19 NETWORKING CUSTOMERS AND NETWORKING IN GENERAL. THAT IS  
11:44:59 20 TRANSFORMATIVE USE.

11:45:00 21 AND DR. BLACK TALKED ABOUT NOT ONLY ALL OF THESE CHANGES,  
11:45:07 22 BUT CHANGES TO THE CLI ITSELF. AND THAT'S IMPORTANT. AND I  
11:45:12 23 THINK WE HAD A DRAWING FROM DR. BLACK AS WELL. THIS IS IT.  
11:45:19 24 JSON.

11:45:20 25 WHAT HE DESCRIBED LAST WEEK ON FRIDAY, I BELIEVE, WAS



11:45:26 1 OBVIOUSLY A MANUAL ENTRY SYSTEM WHERE YOU ARE GOING TO  
11:45:30 2 CONFIGURE ONE SWITCH AT A TIME, DOES NOT WORK WELL WITH 40,000  
11:45:36 3 SWITCHES IN YOUR NETWORK, RIGHT? THAT'S A NONSTARTER.

11:45:39 4 YOU'VE GOT TO HAVE A WAY OF AUTOMATING IT SO THAT THE  
11:45:42 5 COMPUTER, ITSELF, DOES THAT CONFIGURATION. THAT'S HOW COME UP  
11:45:46 6 CAN SET UP A SYSTEM IN TWO HOURS AND NOT TWO WEEKS.

11:45:51 7 SO HE DESCRIBED TAKING THE CLI AND MODIFYING IT WITH NEW  
11:45:56 8 CODE AND PACKAGING IT INSIDE WHAT HE CALLED AN EAPI SO THAT IT  
11:46:02 9 COULD BE OPERATED AUTOMATICALLY BY THE SOFTWARE THAT GOOGLE AND  
11:46:07 10 FACEBOOK AND MICROSOFT DESIGNED THEMSELVES AND GET THEMSELVES  
11:46:11 11 IN A POSITION TO RUN THESE DATA CENTERS AUTOMATICALLY, WHICH IS  
11:46:16 12 WHAT THEY HAVE TO DO.

11:46:19 13 NOW, YOU DON'T HAVE TO TAKE IT FROM THEM, THE MARKET HAS  
11:46:23 14 SPOKEN TOO, YOU SAW THIS IN THE OPENING AND THE WITNESSES FILL  
11:46:26 15 TODAY IN.

11:46:27 16 ARISTA LAUNCHED THE FIRST HIGH SPEED 48-PORT SWITCH 2 TO  
11:46:32 17 3 YEARS BEFORE ANYBODY ELSE, RIGHT? WHEN OTHERS WERE DOWN  
11:46:35 18 THERE WITH 12 TO 18 PORTS, ARISTA WAS ALREADY AT 48. AND IN  
11:46:40 19 2010, NETWORK WORLD TESTED ARISTA AGAINST THE MARKET AND  
11:46:44 20 AGAINST CISCO AND ARISTA CAME OUT ON TOP IN VIRTUALLY EVERY  
11:46:48 21 CATEGORY.

11:46:49 22 AND BY 2010 THEY NOW HAD A 384-PORT SWITCH RUNNING AT HIGH  
11:46:55 23 SPEED, TEN GIGABIT. NOBODY ELSE WAS EVEN AT 60. THEY WERE 5  
11:46:59 24 TO 6 TIMES THE CAPACITY OF ANYBODY ELSE AND MUCH HIGHER SPEED.

11:47:04 25 AND FOLLOWING THAT, THEY KEPT ADDING PORTS AND ADDING

11:47:08 1 SPEED. THEY GOT TO 1,000 PORTS, THEY GOT TO 40 GIGABIT SPEEDS,  
11:47:13 2 THEY GOT THERE FASTER THAN ANYBODY ELSE.

11:47:17 3 YOU DON'T HAVE TO ACCEPT EVEN THE EVIDENCE FROM THE  
11:47:21 4 MARKET, BECAUSE CISCO AGREES. NOTE NOW, I'VE GOT A TRIAL  
11:47:26 5 EXHIBIT NUMBER ON HERE, JUST BECAUSE EVERYONE HAS BEEN SAYING  
11:47:29 6 YOU ARE GOING TO HAVE TRIAL EXHIBITS BACK THERE, BUT THESE  
11:47:34 7 BEAUTIFUL SLIDES, YOU WON'T HAVE THOSE. YOU WON'T HAVE THE  
11:47:36 8 SLIDES.

11:47:36 9 SO THIS IS TRIAL EXHIBIT 5119. IT'S MR. PATIL'S THESIS.  
11:47:42 10 HE'S A FORMER CISCO ENGINEER. HE LOOKED AT ARISTA AS A MARKET  
11:47:48 11 STUDY AND SAID IT'S A NEW PARADIGM. ARISTA IS AN EXAMPLE OF  
11:47:53 12 INNOVATION IN THIS AREA, IT'S A NEW PARADIGM. HE DID A  
11:47:57 13 BEAUTIFUL MASTER THESIS, SPENT SIX MONTHS, THAT WAS HIS  
11:48:00 14 CONCLUSION.

11:48:01 15 NOW HERE WAS THE OFF-THE-CUFF CONCLUSION BY MR. REMAKER.  
11:48:05 16 NEXT ONE. YOU SAW THIS. IT'S GREAT. HE SAW ONE OF THE NEW  
11:48:08 17 FEATURES IN ARISTA'S PRODUCT, "WOW. UP TO PART THREE. KICK  
11:48:15 18 ASS. I WISH IOS DID THIS." YOUR BIGGEST COMPETITOR LOOKING AT  
11:48:22 19 YOUR PRODUCT, "IT WAS GREAT, I WISH IOS DID THIS."

11:48:24 20 AND THERE ARE MANY E-MAILS LIKE THIS. THE FINAL ONE I'M  
11:48:28 21 GOING TO TALK ABOUT IN THIS SECTION IS, THIS IS AN E-MAIL THAT  
11:48:31 22 MS. ULLAL RECEIVED FROM MORGAN STANLEY.

11:48:35 23 MORGAN STANLEY HAD BEEN USING CISCO SWITCHES FOR YEARS,  
11:48:38 24 BUT NOW THAT ARISTA HAD SOMETHING THIS HIGH SPEED, THAT WOULD  
11:48:42 25 HELP THE BANK PROCESS TRANSACTIONS MORE QUICKLY, MAKE MORE

11:48:46 1 MONEY, BOOM, "YOU MIGHT BE THE CEO OF THE MOST TRANSFORMATIVE  
11:48:50 2 NETWORKING COMPANY IN 20 YEARS."

11:48:53 3 LET ME MENTION ONE OTHER FACT THAT I THINK PROVES  
11:48:56 4 TRANSFORMATIVE USE. HOW OFTEN DOES A COMPANY GO OUT AND SPEND  
11:49:00 5 A BILLION DOLLARS TO DEVELOP WHAT MR. CHAMBERS CALLED AN ARISTA  
11:49:06 6 KILLER, RIGHT? THEY WENT OUT AND SPENT A BILLION DOLLARS ON  
11:49:10 7 INSIEME, THAT'S WHAT HE TESTIFIED TO LAST WEEK, HOPING TO  
11:49:14 8 DEVELOP AN ARISTA KILLER.

11:49:15 9 YOU DON'T SPEND THAT KIND OF MONEY TRYING TO COMPETE WITH  
11:49:19 10 SOMETHING ROUTINE, RIGHT, THAT'S A MAJOR MARKET TRANSITION,  
11:49:23 11 WHICH IS WHAT MR. CHAMBERS CALLED IT, AND THEY SPENT THAT MONEY  
11:49:27 12 TO CATCH UP IN THAT MARKET.

11:49:31 13 OKAY, LET'S LOOK AT OUR SECOND KEY POINT. AND THIS ONE  
11:49:35 14 HAS BEEN ESTABLISHED OVER, AND OVER, AND OVER AGAIN. CISCO  
11:49:39 15 PROMOTED ITS CLI AS AN INDUSTRY STANDARD FOR ITS OWN BENEFIT.

11:49:44 16 THIS GOES TO FAIR USE, THIS GOES TO ABANDONMENT OF THE  
11:49:50 17 COPYRIGHT. THESE FACTS ESTABLISH THE MARKET FACTS THAT THEY  
11:49:54 18 WANT TO IGNORE. YOU DIDN'T HEAR A WORD ABOUT ANY OF THIS IN  
11:49:57 19 THEIR CLOSING ARGUMENT BECAUSE THEY WANT TO PRETEND AS THOUGH  
11:50:00 20 NONE OF THIS EVER HAPPENED.

11:50:02 21 BUT LET'S SEE WHAT IT DID HAPPEN. 2003, THIS IS AN  
11:50:05 22 INTERNAL -- EXCUSE ME, IT'S A CUSTOMER PRESENTATION TO AT&T,  
11:50:11 23 AND THEY TOLD AT&T, IN 2003, CISCO IOS IS THE CURRENT  
11:50:19 24 DE FACTO STANDARD. THIS IS BACK IN 2003. BACK AT THE TIME OF  
11:50:23 25 HUAWEI. WE WILL TALK ABOUT HUAWEI IN A MINUTE.

11:50:26 1 2008, TRIAL EXHIBIT 5299. CAN I GO BACK ONE -- I JUST  
11:50:35 2 WANT TO BACK UP THE TRIAL EXHIBIT ON -- THIS FIRST ONE IS 5457.  
11:50:39 3 YOU MIGHT HAVE THAT IN YOUR NOTEBOOK, BUT IT'S AT PAGE 96, IT'S  
11:50:43 4 A BIG DOCUMENT. SO THAT'S PAGE 96.

11:50:45 5 2008, USES INDUSTRY STANDARD CISCO IOS CLI. SAME COMPANY,  
11:50:51 6 PROMOTING A NEXUS DATA SHEET, TRIAL EXHIBIT 5299. INDUSTRY  
11:50:58 7 STANDARD.

11:50:58 8 2012. TRIAL EXHIBIT 5454. THEY ARE NOW BRINGING OUT A  
11:51:04 9 NEW PRODUCT AND THEY ARE TALKING ABOUT THEIR NX-OS SOFTWARE,  
11:51:07 10 THAT COMPETES NOW WITH ARISTA, BUT JUST LIKE EVERYBODY ELSE, IT  
11:51:11 11 OFFERS THE SAME INDUSTRY STANDARD COMMAND LINE ENVIRONMENT.  
11:51:15 12 THE SAME INDUSTRY STANDARD COMMAND LINE ENVIRONMENT.

11:51:19 13 LET ME GO BACK TO THE PREVIOUS SLIDE, TOO, I WANT TO MAKE  
11:51:22 14 ANOTHER POINT.

11:51:23 15 NOTICE WHAT THEY ARE SAYING TO CUSTOMERS HERE. THEY  
11:51:28 16 CRITICIZE THIS WHEN THE REST OF THE INDUSTRY DOESN'T, NOW THEY  
11:51:32 17 DO IN COURT, BUT THEY WERE SAYING THE BENEFIT OF AN INDUSTRY  
11:51:35 18 STANDARD CLI IS FOR YOU, THE CUSTOMER, YOU MINIMIZE THE AMOUNT  
11:51:39 19 OF TIME NEEDED FOR OPERATORS TO LEARN THE SYSTEM.

11:51:42 20 THAT'S WHAT WE ARE TALKING ABOUT. IT'S A BENEFIT FOR  
11:51:45 21 CUSTOMERS, WHICH CISCO RECOGNIZED AND WANTED TO EMBRACE AND  
11:51:49 22 SAID OVER, AND OVER, AND OVER, AND MORE THAN THAT, CISCO SAID  
11:51:54 23 PUBLICLY, WE KNOW EVERYBODY IS USING OUR SYSTEM, LET'S LOOK AT  
11:51:58 24 THIS NEXT ONE.

11:51:59 25 TRIAL EXHIBIT 7996. CISCO LIVE. CISCO LIVE FOLKS IS LIKE

11:52:06 1 MAC WORLD. YOU KNOW, MAC WORLD IS APPLE'S BIG USER CONFERENCE,  
11:52:10 2 CISCO LIVE IS THE SAME THING FOR CISCO, THOUSANDS OF PEOPLE  
11:52:13 3 COME AND ATTEND.

11:52:14 4 WHAT DID THEY TELL THEM? JUST A COUPLE OF YEARS AGO,  
11:52:17 5 "OVER THE YEARS, THE BASIC LOOK AND FEEL OF THE COMMAND-LINE  
11:52:17 6 INTERFACE."

11:52:21 7 THAT'S THE SAME THING THEY SAY IS SO HIGHLY PROTECTED  
11:52:25 8 HERE, AND THEY ARE SUING OVER, HAS BEEN MIMICKED BY OTHER  
11:52:28 9 MANUFACTURERS. RECOPIED, TO THE POINT WHERE IT IS THE  
11:52:36 10 DE FACTO STANDARD OF NETWORK PROGRAMMING. OVER, AND OVER, AND  
11:52:39 11 OVER. NOT ONLY DID THEY PROMOTE IT, BUT THEY RECOGNIZED  
11:52:42 12 EVERYONE WAS USING IT. AND IN FACT, EVERYONE ELSE WAS.

11:52:49 13 NEXT SLIDE, PLEASE.

11:52:50 14 HERE'S A NORTEL PRESENTATION IN 2005. THEY'RE PROMOTING  
11:52:54 15 THEIR TEN GIGABIT SWITCH. THIS IS BEFORE ARISTA EVEN EXITED.  
11:52:58 16 WHAT DO THEY CALL IT? A CISCO-LIKE CLI. WE HAVE A CISCO-LIKE  
11:53:03 17 CLI. THAT'S 5441.

11:53:07 18 FORCE10, BEFORE THEY WERE BOUGHT BY DELL, 2008, AGAIN  
11:53:11 19 BEFORE ARISTA IS ON THE SCENE. FAMILIAR CISCO STYLE CLI. AND  
11:53:17 20 FULL RANGE OF STANDARD-BASED PROTOCOLS. FAMILIAR CISCO-STYLED  
11:53:22 21 CLI.

11:53:23 22 HP. HERE'S ANOTHER ONE. TRIAL EXHIBIT 6970. WE'VE GOT  
11:53:28 23 MIGRATION TOOLS, HOW TO MIGRATE FROM A CISCO NETWORK TO AN HP  
11:53:33 24 NETWORK.

11:53:34 25 I HEARD CISCO'S COUNSEL TALK ABOUT TARGETING CISCO'S

11:53:37 1 CUSTOMERS. THERE'S NOTHING WRONG WITH GOING AFTER EACH OTHER'S  
11:53:40 2 CUSTOMERS, THAT'S HOW WE OPERATE IN THE UNITED STATES, RIGHT?  
11:53:45 3 CISCO HAS 80 PERCENT MARKET SHARE, SO EVERYBODY IS TRYING TO  
11:53:48 4 GAIN MORE CUSTOMERS. YOU CAN'T WALK AROUND IN NETWORKING  
11:53:51 5 WITHOUT TRIPPING OVER A CISCO CUSTOMER.

11:53:54 6 SO HERE IS HP SAYING, WE HAVE AN INDUSTRY STANDARD CLI  
11:53:59 7 WITH A VERY SIMILAR COMMAND-LINE INTERFACE AND MIGRATION TOOLS.

11:54:03 8 AND WE SAW YESTERDAY -- EXCUSE ME, I THINK IT WAS ON MAYBE  
11:54:09 9 WEDNESDAY, A GREAT EXAMPLE OF HOW HP ADVERTISES, THIS WAS THE  
11:54:13 10 MANUAL THAT MR. VENKATRAMAN TALKED ABOUT, AND WE SAW THIS IN  
11:54:17 11 THEIR OPENING, THEY DO HAVE A PRODUCT COMWARE THAT'S DIFFERENT.

11:54:21 12 BUT TAKE A LOOK AT WHAT THEY SHOW IN THEIR MANUAL, THEY  
11:54:26 13 ARE COMPARING THEIR MAIN ENTERPRISE PRODUCT, THAT'S THE SAME  
11:54:29 14 MARKET THAT CISCO WAS IN, TO CISCO.

11:54:32 15 NOW YOU TELL ME HOW DIFFERENT THOSE ARE. "SHOW FLASH,"  
11:54:36 16 "SHOW VERSION," "SHOW RUN," "SHOW START," "SHOW HISTORY," "SHOW  
11:54:40 17 LOG IN," YOU CAN GO ALL THE WAY DOWN. THE ONLY PERSON THAT  
11:54:45 18 DOESN'T RECOGNIZE THOSE ARE SIMILAR AND DR. ALMEROTH, AND WE  
11:54:48 19 WILL TALK MORE ABOUT HIM IN A MINUTE.

11:54:51 20 THAT'S HP ADVERTISING THIS WAS SO COMMON THAT THE LEADING  
11:54:55 21 INDUSTRY PUBLICATIONS POINTED OUT THAT EVERYBODY WAS COPYING  
11:54:58 22 CISCO.

11:54:59 23 THIS IS A 2007 ARTICLE FROM *NETWORK WORLD*. THIS  
11:55:02 24 *NETWORK WORLD* YOU'VE SEEN SEVERAL ARTICLES THEY DID THE  
11:55:05 25 HEAD-TO-HEAD TEST AND THEY ARE ONE OF THE LEADERS, "APPEALING

11:55:09 1 TO CCIE'S," THAT'S FOLKS THAT ARE CERTIFIED ON CISCO INTERFACE,  
11:55:15 2 "HARDWARE VENDORS COPY CISCO CLI."

11:55:18 3 THIS IS BEFORE ARISTA WAS ON THE MARKET. CISCO'S CLI HAS  
11:55:22 4 BECOME A STANDARD IN THE INDUSTRY WHICH MANY HARDWARE VENDORS  
11:55:25 5 COPY AND PROMOTE WHEN TRYING TO GET INTO CISCO ACCOUNTS.

11:55:31 6 COPY AND PROMOTE. AND OF COURSE, OF COURSE, A COMPANY  
11:55:35 7 LIKE CISCO THAT'S FOLLOWING THE MARKET AND DOING COMPETITIVE  
11:55:39 8 ANALYSIS, THEY KNEW ALL OF THIS.

11:55:41 9 HERE'S A DOCUMENT AND AN ANALYSIS THAT MR. VOLPI TESTIFIED  
11:55:45 10 ABOUT LAST WEEK. INTERNAL TO CISCO 2006. INTERNAL 2006,  
11:55:51 11 TWO YEARS BEFORE ARISTA IS ON THE SCENE, THEY ARE SAYING TO  
11:55:54 12 THEMSELVES, "OUR CLI BECOMES INDUSTRY STANDARD BETWEEN '93 AND  
11:56:00 13 2000." THAT'S THEIR DOCUMENT, THEIR INTERNAL ANALYSIS  
11:56:04 14 DISCUSSED WITH ALL THE SENIOR MANAGERS.

11:56:07 15 AND NOW I WANT TO SHOW SOME ABSOLUTELY CRITICAL TESTIMONY  
11:56:11 16 FROM MR. VOLPI. UNIMPEACHED BY CISCO.

11:56:14 17 CAN I HAVE THIS NEXT SLIDE UP.

11:56:16 18 OKAY. WE ASKED HIM, HE'S RUNNING THE ETHERNET SWITCH  
11:56:20 19 BUSINESS. HE'S RUNNING THE BUSINESS AT CISCO. HE'S REPORTING  
11:56:25 20 TO MR. GIANCARLO WHO IS THE CHIEF TECHNOLOGY OFFICER, AND THEY  
11:56:28 21 REPORT TO MR. CHAMBERS.

11:56:30 22 I ASKED HIM, "WAS THE USE OF A SIMILAR OR VERY SIMILAR  
11:56:34 23 COMMAND LINE LIMITED OR WIDESPREAD?" HE SAID, "ALMOST  
11:56:38 24 EVERYBODY THAT COMPETED WITH US USED A SIMILAR LANGUAGE. SOME  
11:56:43 25 OF THEM WERE VERY, VERY SIMILAR."

11:56:45 1 THIS IS THE MOST SENIOR EXECUTIVE INSIDE CISCO TELLING US  
11:56:49 2 THAT WAY BACK WHEN HE WAS THERE BEFORE HE LEFT IN '07,  
11:56:52 3 EVERYBODY INSIDE KNEW THAT FOLKS WERE USING IT.

11:56:56 4 THEN WHAT? WERE THERE BUSINESS REASONS FOR CISCO NOT TO  
11:57:01 5 OBJECT TO COMPETITORS USING THE SAME OR VERY SIMILAR CLI?

11:57:07 6 HE GAVE A VERY TRUTHFUL STRAIGHTFORWARD ANSWER UN  
11:57:10 7 IMPEACHED, I WOULD SAY THE NOTION OF OTHER PEOPLE USING OUR CLI  
11:57:14 8 IS A DOUBLE EDGED SWORD, HE SAYS, AT THE TIME YOU DIDN'T WANT  
11:57:18 9 EVERYBODY TO JUST DIRECTLY COPY. VERY HONEST.

11:57:23 10 "ON THE OTHER HAND, IT WOULD REINFORCE OUR MARKET  
11:57:26 11 LEADERSHIP BECAUSE CISCO WAS FUNDAMENTALLY THE AUTHOR OF THE  
11:57:29 12 CLI. THEY HAVE BEEN AROUND THE LONGEST."

11:57:33 13 AND THE FACT THAT OTHER PEOPLE WERE USING IT, ALLOWED  
11:57:35 14 CISCO TO PRESENT ITSELF AS THE DE FACTO LEADER AND SAY LOOK,  
11:57:40 15 EVERYONE ELSE IS USING IT. SO IT SORT OF REINFORCED OUR MARKET  
11:57:46 16 LEADERSHIP POSITION.

11:57:47 17 MR. VOLPI TOLD US, THEY MADE A DECISION BACK BEFORE ARISTA  
11:57:52 18 WAS CREATED TO CALL IT A DE FACTO STANDARD AND ALLOW OTHER  
11:57:56 19 FOLKS TO USE IT WHICH THEY DID OVER THE YEARS.

11:57:59 20 LET'S LOOK AT THE NEXT SLIDE. MR. GIANCARLO, HE IS  
11:58:03 21 VOLPI'S BOSS. AGAIN, UN IMPEACHED BY CISCO ON THIS POINT.

11:58:09 22 WHAT IF ANY BUSINESS REASON DID CISCO HAVE FOR NOT CALLING  
11:58:12 23 UP COMPANIES LIKE FOUNDRY AND TELLING THEM NOT TO USE OR COPY  
11:58:15 24 THE CLI?

11:58:18 25 WHAT'S HIS ANSWER? "WELL, AGAIN, IT WAS OUR BELIEF, BASED



1 ON ASSERTIONS WE HAD FROM CISCO MANAGEMENT AND REPEATED OVER AS  
2 WE DISCUSSED SUCH THINGS, THAT THE CLI WAS NOT PROTECTABLE.

3 GIVEN IN THE LATE 90'S, AS I SAID, WE BELIEVE IT WAS NOT  
4 PROTECTABLE. WE SAID, WELL, IF WE CAN'T PROTECT IT, THEN LET'S  
5 USE IT, WE MIGHT AS WELL SAY IT'S A STANDARD. IF OTHERS ARE  
6 USING IT AS WELL, AND CAN CLAIM TO BE, STANDARD AND OPEN, WHICH  
7 IS AN ADVANTAGE UNTO ITSELF."

8 THESE ARE THE TWO MOST SENIOR BUSINESS LEADERS AT CISCO  
9 TELLING YOU EXACTLY WHAT HAPPENED IN THE MARKET.

10 NOW THE ENGINEERS AGREED, THE ENGINEERS AGREED, LET'S LOOK  
11 AT THE NEXT SLIDE. THIS IS MR. KATHAIL. HE TESTIFIED LAST  
12 WEEK, MAYBE THE WEEK BEFORE.

13 "THAT WAS SOMETHING CISCO WAS PERFECTLY SATISFIED WITH,  
14 RIGHT?"

15 "YES."

16 "THAT WAS GOOD FOR CISCO THAT CUSTOMERS COULD GO FEEL AT  
17 HOME ON COMPETITORS'S PRODUCTS, RIGHT?"

18 "YES. CISCO WANTED CUSTOMERS TO FEEL AT HOME ON  
19 COMPETITORS PRODUCTS USING THE SAME STANDARD SET OF COMMANDS."

20 MR. REMAKER.

21 "CISCO WAS HAPPY WITH THE CLI COMMANDS BEING A DE FACTO  
22 INDUSTRY STANDARD BECAUSE THAT WAS CONSISTENT WITH THE CULTURE  
23 OF MAKING CUSTOMERS SUCCESSFUL."

24 "YES, A CONSISTENT CLI MAKES OUR CUSTOMERS SUCCESSFUL."

25 NOW LET ME PAUSE FOR JUST A MINUTE BECAUSE WE HEARD A

11:59:52 1 LITTLE BIT ABOUT HUAWEI.

11:59:53 2 COULD I SEE THE NEXT SLIDE.

11:59:55 3 THE BUSINESS MANAGER RUNNING HUAWEI TESTIFIED, THAT'S  
11:59:59 4 MR. GIANCARLO, THAT HUAWEI WAS ABOUT SOURCE CODE. BUT YOU  
12:00:02 5 DON'T EVEN NEED TO RELY JUST ON MR. GIANCARLO. HUAWEI HAPPENED  
12:00:06 6 IN 2003. 2003. ALL OF THESE STATEMENTS THAT WE'RE TALKING  
12:00:12 7 ABOUT ARE AFTER THE HUAWEI LAWSUIT WAS DONE, RIGHT?

12:00:19 8 YOU SAW THE SETTLEMENT DOCUMENT THAT SHOWED THAT CISCO  
12:00:22 9 AGREED TO ALLOW HUAWEI TO HAVE 10 TO 20 PERCENT OVERLAP WITH  
12:00:26 10 ITS CLI. THAT WAS IN '03. ALL THESE STATEMENTS AND THE  
12:00:30 11 STATEMENTS BY MR. GIANCARLO AND THE STATEMENT BY MR. VOLPI AND  
12:00:34 12 ALL OF THESE DATA SHEETS, THEY POST-DATE HUAWEI. THEY'VE  
12:00:38 13 HAPPENED SINCE THEN. HUAWEI WAS A LAWSUIT ABOUT SOURCE CODE.

12:00:43 14 IN THE HUAWEI CASE, ACTUAL ORIGINAL SOURCE CODE INSIDE THE  
12:00:46 15 SWITCH WAS COPIED, 29,000 LINES OF IT, APPARENTLY. THAT'S  
12:00:53 16 QUITE A BIT. AND AS MR. GIANCARLO SAYS, THE FOCUS WAS ON THEM  
12:00:56 17 STOPPING USING OUR SOURCE CODE.

12:00:59 18 THEN WHAT OTHER EVIDENCE DO YOU HAVE ABOUT WHAT HAPPENED  
12:01:01 19 IN THE MARKET? THIS IS TRIAL EXHIBIT 9049. IT'S -- IT WAS THE  
12:01:07 20 ONE INSTANCE WHEN DR. BLACK WAS ABLE TO GET HIS HANDS ON ALL  
12:01:12 21 THE RELEVANT MANUALS FOR ONE CUSTOMER, AND HE PRESENTED THIS  
12:01:17 22 EXHIBIT TO YOU, IT'S 26 PAGES OF COMMANDS THAT ARE IN COMMON  
12:01:24 23 BETWEEN CISCO AND DELL. 26 PAGES, 1600 COMMANDS.

12:01:30 24 SO DON'T TELL ME THAT SOMEHOW ARISTA IS AN OUTLIER OR  
12:01:34 25 ARISTA IS THE WORST OR ARISTA IS THE MOST BLATANT, THAT'S

12:01:38 1 BALONEY. AND DR. BLACK'S WORK PROVES IT. EVEN WHEN HE LIMITED  
12:01:42 2 HIMSELF TO JUST THE 500 COMMANDS ASSERTED HERE, HE FOUND  
12:01:46 3 HUNDREDS OF THEM THE SAME AT D-LINK, HP, JUNIPER, JUNOS-E, AND  
12:01:53 4 A DOZEN OTHERS, RIGHT? THEY ARE ALL UP THERE USING THE SAME  
12:01:58 5 BASIC SETS OF COMMANDS. SO THAT'S TX 9049.

12:02:04 6 NOW, THE MARKET SAID THE SAME THING. HERE'S MR. SHAFER.  
12:02:07 7 YOU GUYS KNOW BY NOW JUNOS HAS -- JUNIPER HAS TWO DIFFERENT  
12:02:12 8 PRODUCTS. ONE PRODUCT ADDRESSES A DIFFERENT MARKET, AND  
12:02:15 9 ANOTHER PRODUCT ADDRESSES A MARKET FOR ENTERPRISE CUSTOMERS.

12:02:19 10 IN THAT MARKET, THEY WERE MARKETING JUNOS-E. WHAT DID  
12:02:22 11 MR. SHAFER SAY? "THE PRODUCT THAT JUNIPER ACQUIRED AND SOLD,  
12:02:27 12 THAT PRODUCT USED HUNDREDS OF THE SAME CLI COMMANDS THAT ARE  
12:02:32 13 SUPPORTED BY THE CISCO?"

12:02:34 14 "YES. IT SUPPORTED THE SAME MODES AND THE SAME PROMPTS.  
12:02:38 15 YES."

12:02:39 16 THAT'S JUNIPER, MR. SHAFER, TESTIFYING ABOUT JUNOS-E.

12:02:44 17 LET'S LOOK AT WHAT DELL SAYS. YOU HAD MR. GAVIN CATO  
12:02:47 18 HERE, HE WAS ON VIDEOTAPE, NOT LIVE, FROM DELL.

12:02:51 19 "ARE YOU AWARE OF OTHER VENDORS WITH WHOM DELL'S CLI  
12:02:54 20 COMMANDS OVERLAP?"

12:02:56 21 AND WE KNOW DELL HAS 1600, OR IN THAT BALLPARK, THAT  
12:03:00 22 OVERLAP. "DO YOU KNOW ANYBODY ELSE?"

12:03:01 23 "OH, YEAH, OH, YEAH. ARISTA, JUNIPER, EXTREME,  
12:03:07 24 ENTERASYS, ANYBODY THAT USES THE BROADCOM POWERCONNECT SOFTWARE  
12:03:11 25 OR LEVEL 7, EVERYONE OUT THERE WITH CISCO'S KNOWLEDGE AND

1 ACQUIESCENCE FOR THEIR OWN BENEFIT USING THE SAME COMMAND."

2 LET'S LOOK AT THE NEXT ONE. THIS IS MR. VENKATRAMAN, HE'S  
3 HEWLETT-PACKARD. SO BETWEEN THE THREE WE'VE COVERED JUNIPER,  
4 DELL, HEWLETT-PACKARD, THREE OF THE BIGGEST COMPETITORS.

5 "WOULD YOU BE SURPRISED TO LEARN THAT THE HP PROVISION ON  
6 THE LEFT SIDE, HAS HUNDREDS OF OVERLAPPING COMMANDS WITH  
7 CISCO?"

8 "NO, MOST VENDORS HAVE OVERLAPPING NAME AND SYNTAX."

9 MOST VENDORS. MOST VENDORS. THESE ARE PEOPLE WITH NO AXE  
10 TO GRIND. THEY ARE OUT THERE, THEY WERE CALLED BY BOTH  
11 PARTIES. THEY CAME IN AS THIRD PARTIES TO LET YOU KNOW WHAT'S  
12 HAPPENING IN THE MARKET, ON REBUTTAL.

13 NOW WAS ARISTA'S USE OF THE CLI A CISCO-LIKE CLI A  
14 SURPRISE OR A SECRET? OH, NO, OH, NO.

15 TAKE A LOOK AT THE BOTTOM. THE TOP OF THE SLIDE WE SAW  
16 EARLIER, THAT'S WHAT WAS HAPPENING AT ARISTA. IN 2009, CISCO  
17 BUYS A SWITCH, ALL RIGHT. TX 9079, THAT'S THAT REALLY BORING  
18 INTERROGATORY I READ YOU ABOUT TWO WEEKS AGO, BUT IT'S  
19 IMPORTANT BECAUSE WHAT IT SHOWS -- IT'S 9077, I APOLOGIZE,  
20 9077. IT'S A MULTI-PAGE EXHIBIT SHOWING ALL THE SWITCHES FROM  
21 ARISTA THAT CISCO BOUGHT. THAT'S WHY THEIR COUNSEL STOOD UP  
22 AND SAID OH, WE ARE NOT COMPLAINING ABOUT THAT. THAT'S BECAUSE  
23 THEY BOUGHT MORE THAN A DOZEN AND TESTED THEM STARTING IN '09.  
24 THEY TESTED THEM. THEY USED THE CLI. THEY KNEW WHAT THE CLI  
25 DID. TWO YEARS LATER THEY WROTE A 20-PAGE RESPONSE TO THAT

12:05:01 1 NETWORK WORLD ARTICLE. AND TO GET TO THAT, THEY HAD TO STUDY  
12:05:05 2 AGAIN.

12:05:05 3 THEN IN 2011, MR. JIANDANI CREATED THE TIGER TEAM, SOME 30  
12:05:11 4 ENGINEERS FOCUSED ONLY ON ARISTA. DO YOU THINK THEY OVERLOOKED  
12:05:13 5 THE CLI? I KIND OF DOUBT IT.

12:05:15 6 2013, MR. CHAMBERS INVESTS A BILLION DOLLARS IN INSIEME,  
12:05:19 7 DO YOU THINK HE DID THAT WITHOUT KNOWING EVERYTHING ABOUT  
12:05:23 8 ARISTA'S PRODUCTS? HE TOLD THE PRESS HE KNEW EVERYTHING ABOUT  
12:05:25 9 IT AND HE KNEW EVERY ACCOUNT THEY WERE IN.

12:05:28 10 AND THEN IN 2013 MS. JIANDANI SAYS, WAIT A MINUTE, CALL TO  
12:05:32 11 ACTION, WE'VE GOT TO PREVENT THE IPO, THESE GUYS ARE GETTING  
12:05:36 12 SERIOUS. WE'VE GOT TO THE PREVENT THE IPO. 2013.

12:05:40 13 2014, LAWSUIT IS FILED WITH ABSOLUTELY NO ADVANCE  
12:05:48 14 INVITATION TO TALK, CEASE AND DESIST LETTER, NOTHING. THEY  
12:05:52 15 TREATED HUAWEI BETTER. MR. GIANCARLO MADE TWO TRIPS TO CHINA  
12:05:57 16 TO NEGOTIATE WITH HUAWEI, THAT ACCORDING TO THEM, SOLD SOURCE  
12:06:00 17 CODE.

12:06:01 18 THEY SUED ARISTA WITHOUT SO MUCH AS A PHONE CALL, A  
12:06:05 19 LETTER, NOT A THING.

12:06:06 20 AND IF THERE'S ANY DOUBT THAT CISCO WAS FULLY AWARE,  
12:06:10 21 STARTING IN '09, THAT ARISTA WAS USING A CISCO-LIKE  
12:06:16 22 COMMAND-LINE INTERFACE, TESTIMONY THAT YOU HEARD IN THE TRIAL  
12:06:18 23 FROM MR. GOURLAY, PUTS THAT TO BED.

12:06:26 24 (WHEREUPON, A VIDEO WAS PLAYED IN OPEN COURT.)

12:07:27 25 MR. VAN NEST: YOUR HONOR, THIS WOULD BE A GOOD TIME

12:07:28 1 TO TAKE OUR NOON BREAK.

12:07:30 2 THE COURT: OKAY. LET'S DO THAT.

12:07:32 3 LET'S TAKE OUR USUAL HOUR BREAK AND COME BACK AT 1:10.

12:07:37 4 (RECESS FROM 12:07 P.M. UNTIL 1:10 P.M.)

01:10:49 5 THE COURT: WE ARE BACK ON THE RECORD AND ALL OF OUR  
01:18:25 6 JURORS ARE HERE.

01:18:26 7 MR. VAN NEST, WOULD YOU LIKE TO CONTINUE?

01:18:28 8 MR. VAN NEST: I WOULD YOUR HONOR, THANK YOU VERY  
01:18:30 9 MUCH.

01:18:32 10 **CLOSING ARGUMENTS BY MR. VAN NEST (CONTINUED)**

01:18:34 11 WELCOME BACK, EVERYONE, FROM LUNCH, AND THANK YOU AGAIN  
01:18:36 12 FOR BEING SO PROMPT AND DILIGENT.

01:18:38 13 LET'S GO BACK TO MR. GOURLAY. THERE WERE COMMENTS THIS  
01:18:40 14 MORNING BY CISCO'S COUNSEL ABOUT BLATANT COPYING. BLATANT  
01:18:45 15 COPYING OF THE CLI.

01:18:47 16 WE NOW KNOW FROM MR. GOURLAY'S TESTIMONY THAT IF THAT'S  
01:18:50 17 SO, IT WAS KNOWN TO CISCO IN 2009. HE JUST TESTIFIED THAT HE  
01:18:56 18 LOOKED AT A SWITCH IN THE TESTING LAB AT CISCO IN '09, AND HE  
01:19:00 19 CONCLUDED THAT ARISTA WAS USING A CLI THAT HAD A CONSISTENT  
01:19:04 20 LOOK AND FEEL TO THE ONE USED BY, NOT JUST CISCO, BUT FOUNDRY,  
01:19:10 21 EXTREME, JUNIPER, AND A HOST OF OTHER NETWORK PROVIDERS.

01:19:17 22 WHY DIDN'T ALARM BELLS GO OFF BACK THEN? WHY WASN'T IT  
01:19:24 23 UNTIL 2014 THAT A LAWSUIT WAS FILED. WELL, THE TESTIMONY OF  
01:19:27 24 MR. VOLPI AND MR. GIANCARLO EXPLAINS IT PERFECTLY. THEY MADE A  
01:19:31 25 BUSINESS DECISION AT CISCO NOT TO PROTECT THE CLI BUT BY

ENCOURAGING OTHERS TO USE IT BY CALLING IT AN INDUSTRY  
STANDARD.

WHY? CUSTOMERS LIKED THAT BETTER AND IT ALLOWED CISCO TO  
SAY WE ARE THE LEADER. OBVIOUSLY, THEY DID THAT BECAUSE,  
HERE'S THE SLIDE YOU SAW THIS MORNING ON THE BOTTOM, OH, ALL  
THAT BLATANT COPYING BY ARISTA.

LOOK AT DELL. DELL IS UP THERE AT 1600 COMMANDS THAT ARE  
THE SAME. THIS DOESN'T FIT TOGETHER. IT DOESN'T FIT TOGETHER  
THAT SOMEHOW CISCO WASN'T AWARE OF THIS UNTIL 2014. WITH ALL  
OF THESE INDUSTRY PLAYERS USING THE COMMANDS, AND CISCO TESTING  
THE SWITCHES IN THEIR LAB, THEY HAD TO KNOW ALL OF THIS.

AND THE ONLY REASONABLE EXPLANATION THAT HE KNOW HAPPENED  
IN THE MARKET, WHICH IS THEY CONTINUED TO PROMOTE THE CLI AS AN  
INDUSTRY STANDARD OVER, AND OVER, AND OVER, AND THEY MADE A  
BUSINESS DECISION NOT TO STOP IT.

NOW THAT'S RELEVANT TO TWO VERY IMPORTANT CONCEPTS.  
ONE, IT MEANS THE USE WAS A FAIR USE, BECAUSE IT'S A USE  
THAT CISCO ENCOURAGED AND UNDERSTOOD WAS REASONABLE AND  
BENEFITTED FROM THEMSELVES.

AND IT ALSO GOES TO ABANDONMENT. THEY ABANDONED THE CLAIM  
FOR COPYRIGHT ON THESE CLI'S WHEN THEY DECIDED NOT TO STOP IT  
TO GO FORWARD, PROMOTE IT AS INDUSTRY STANDARD, AND TOLERATE  
ITS USE BY OTHERS.

ALL OF THIS HAPPENED YEARS AFTER THE HUAWEI LAWSUIT, THEY  
WANT TO TALK SO MUCH ABOUT. ALL OF THIS WE ARE TALKING ABOUT

01:21:05 1 HAPPENED AFTER HUAWEI.

01:21:06 2 OKAY. LET'S TALK ABOUT COPYING AND COPYRIGHT  
01:21:11 3 INFRINGEMENT.

01:21:13 4 KEY POINT, COPYING UNPROTECTED ELEMENTS OF THE CLI IS NOT  
01:21:18 5 INFRINGEMENT. IT'S NOT ENOUGH TO PROVE COPYING. THE COPYING  
01:21:23 6 HAS TO BE OF SOMETHING THAT'S ACTUALLY PROTECTABLE.

01:21:26 7 THE LAW PERMITS COPYING OF FEATURES THAT ARE NOT  
01:21:30 8 PROTECTABLE, EITHER BECAUSE THEY ARE NOT PROTECTABLE AS A  
01:21:33 9 MATTER OF LAW OR BECAUSE THEY ARE NOT ORIGINAL OR BECAUSE THEY  
01:21:38 10 ARE NOT CREATIVE.

01:21:40 11 HERE'S THE JURY INSTRUCTION 36. VERY IMPORTANT. "THEY  
01:21:43 12 HAVE THE BURDEN TO PROVE BY A PREPONDERANCE THAT ARISTA COPIED  
01:21:48 13 ORIGINAL PROTECTED ELEMENTS FROM CISCO'S WORK."

01:21:52 14 SO THE FACT THAT EVERYBODY, INCLUDING ARISTA, WAS USING  
01:21:56 15 SOME OF THE SAME COMMANDS, THAT'S NOT COPYRIGHT INFRINGEMENT  
01:22:00 16 UNLESS WHAT'S BEING COPIED IS PROTECTED.

01:22:04 17 OKAY. LET'S TAKE A LOOK AT THE NEXT ONE WHICH IS VERY  
01:22:07 18 IMPORTANT. JURY INSTRUCTION 39.

01:22:09 19 JUDGE FREEMAN HAS GIVEN US THE INSTRUCTIONS OF THINGS THAT  
01:22:13 20 ARE NOT PROTECTABLE, THINGS YOU CAN'T PROTECT, LET'S LIST THEM:

01:22:17 21 ONE, ANY SINGLE MULTIWORD COMMAND.

01:22:20 22 LET ME PAUSE RIGHT THERE. ALL THAT TESTIMONY YOU HEARD  
01:22:22 23 FROM MR. REMAKER AND MR. LOUGHEED ABOUT HOW CREATIVE THEY WERE  
01:22:25 24 IN CREATING EACH OF THESE MULTIWORD COMMANDS, EVEN IF IT WERE  
01:22:30 25 TRUE, THAT'S NOT PROTECTABLE. THOSE AREN'T PROTECTABLE.



01:22:34 1 COMMAND HIERARCHIES, ALSO NOT PROTECTABLE. THE TESTIMONY  
01:22:36 2 FROM DR. ALMEROOTH AND MR. LOUGHEED, ALL OF THESE WONDERFUL  
01:22:42 3 HIERARCHIES, NOT PROTECTABLE.

01:22:45 4 SPECIFIC MODES AND PROMPTS, NOT PROTECTABLE.

01:22:49 5 USE OF COMMAND SYNTAX, THAT'S HOW ALL OF THEIR COMMANDS  
01:22:53 6 ARE WRITTEN, A VERB LIKE "SHOW," OR "CLEAR," OR "CONFIGURE,"  
01:22:57 7 WITH AN OBJECT LIKE "BGP," OR "IP," THAT'S COMMAND SYNTAX, NOT  
01:23:04 8 PROTECTABLE.

01:23:05 9 FUNCTIONS, NOT PROTECTABLE. OBVIOUSLY THAT'S A HUGE  
01:23:08 10 POINT.

01:23:08 11 HOW THE DEVICE ACTUALLY OPERATES, NOT PROTECTED.

01:23:13 12 USING THESE FEATURES, NOT PROTECTED. ALL THEY'VE GOT IS A  
01:23:17 13 CLAIM ABOUT THE LABELS ON THE KNOBS THAT DR. BLACK TALKED  
01:23:20 14 ABOUT, BUT NOT EVEN THAT.

01:23:23 15 INDIVIDUAL HELP DESCRIPTION PHRASES, NOT PROTECTABLE.

01:23:27 16 SO WHAT DOES THIS MEAN? THIS MEANS THAT ALL THIS  
01:23:31 17 TESTIMONY YOU GOT ABOUT THE COMMANDS, THAT'S NOT ON POINT.  
01:23:36 18 THEIR CLAIM NOW IS ONLY THAT THEY HAVE A COMPILATION OF ALL THE  
01:23:42 19 COMMANDS IN IOS, A COMPILATION -- THAT'S THE COLLECTION OF ALL,  
01:23:47 20 16,000. THEY ARE SAYING THAT'S WHAT THEY CAN PROTECT. OR IN  
01:23:51 21 THE CASE OF THESE HELP DESCRIPTIONS, ALL OF THOSE, THERE'S  
01:23:57 22 52,000 HELP DESCRIPTIONS, 52,000 HELP DESCRIPTIONS, OR ALL THE  
01:24:00 23 COMMAND OUTPUTS, THERE'S THOUSANDS OF THOSE TOO.

01:24:04 24 THEIR CLAIM IS NOW LIMITED TO THESE COLLECTIONS. WHY IS  
01:24:07 25 THAT IMPORTANT? ARISTA DIDN'T COPY THE COMPILATION, WE KNOW

01:24:11 1 THAT. THEY ARE ONLY ACCUSING ARISTA OF USING 500 OF THE  
01:24:16 2 THOUSANDS OF COMMANDS IN THE SYSTEM.

01:24:18 3 SO IT'S CRYSTAL CLEAR THAT ARISTA DIDN'T COPY THE  
01:24:22 4 COMPILATION, THEIR CLAIM NOW IS LIMITED TO THESE COMPILATIONS.

01:24:26 5 SO WHAT HAVE THEY PROVED THERE? DID ANYBODY COME IN AND  
01:24:30 6 TESTIFY ABOUT HOW THE WHOLE ARRANGEMENT OF COMMANDS WORKED  
01:24:33 7 WELL? NO. YOU DIDN'T HEAR ANY OF THAT. OR WHY ALL THE HELP  
01:24:37 8 DESCRIPTION COMPILATIONS IS A PROTECTABLE CREATIVE THING?

01:24:41 9 ALL THESE ARE, ARE COLLECTIONS OF EITHER COMMANDS OR HELP  
01:24:45 10 DESCRIPTIONS THAT THEY'VE WRITTEN OVER MANY YEARS AND STORED IN  
01:24:48 11 THEIR MANUALS AND ELSEWHERE. THEY DIDN'T EVEN SHOW YOU AN  
01:24:53 12 EXAMPLE OF WHAT A COMPILATION LOOKED LIKE, NOTHING LIKE THAT.

01:24:56 13 AND CRITICALLY, THEY ARE NOT CLAIMING THAT THERE'S  
01:24:59 14 SOMETHING UNIQUE ABOUT THE 506 THEY ARE CLAIMING ABOUT, THAT  
01:25:03 15 THERE'S SOME KIND OF UNIFIED THING OR THAT IT HAS A LIFE  
01:25:07 16 OUTSIDE THIS LAWSUIT, THOSE ARE JUST THE COMMANDS THEY FOUND  
01:25:10 17 WHEN THEY WENT THROUGH THE CLI THAT WERE SIMILAR TO THEIRS, IN  
01:25:14 18 SOME CASES IDENTICAL TO THEIRS, RIGHT?

01:25:17 19 IN OTHER WORDS, THEY DON'T HAVE ANY EVIDENCE BEFORE YOU  
01:25:20 20 THAT THESE 506 COMMANDS REPRESENT ANYTHING OUTSIDE OF THIS  
01:25:26 21 LAWSUIT, ANYTHING LIKE A UNIFIED STRUCTURE OR SOMETHING  
01:25:29 22 SIGNIFICANT OR SOMETHING SPECIALLY CREATIVE OR SOMETHING  
01:25:33 23 PROTECTABLE, RIGHT?

01:25:35 24 AND DR. BLACK DID THAT. WE ASKED HIM TO LOOK, OF THE 506  
01:25:39 25 ASSERTED COMMANDS, IS THERE ANY PATTERN YOU FOUND AMONG THOSE?

01:25:43 1 HE SAYS, "I MEAN, YOU CAN LOOK THROUGH THE LIST AND I CAN'T  
01:25:47 2 DISCERN ANY MEANINGFUL PATTERN. IT'S MORE OR LESS AN ARBITRARY  
01:25:52 3 LIST, FROM WHAT I CAN SEE, OTHER THAN PERHAPS THEY SHARE A  
01:25:56 4 COMMONALITY WITH ARISTA."

01:25:59 5 YOU WOULD SEE THE SAME KIND OF LIST OF 1600, IF WE WERE  
01:26:02 6 TALKING ABOUT DELL, OR MAYBE 7 OR 800 IF WE WERE TALKING ABOUT  
01:26:08 7 JUNOS-E, OR WHO KNOWS HOW MANY IF WE WERE TALKING ABOUT HP,  
01:26:12 8 EXTREME, BROCADE OR THE OTHERS, RIGHT? THERE'S NOTHING  
01:26:15 9 PROTECTABLE ABOUT THAT COMPILATION.

01:26:18 10 NOW, I KNOW WHAT THEIR ANSWER WILL BE, WELL, YOU TOOK WHAT  
01:26:22 11 YOU NEEDED. AND GHEE, MR. SADANA SAID "CORE COMMANDS." WHAT  
01:26:25 12 MR. SADANA IS TALKING ABOUT IS FOR THOSE ROUTINE UTILITY  
01:26:29 13 COMMANDS AND FUNCTIONS THAT ANY SWITCH HAS, THE INDUSTRY HAS  
01:26:34 14 ADOPTED A COMMON LANGUAGE FOR THOSE.

01:26:37 15 THAT DOESN'T EVEN ADDRESS ALL THE NEW FEATURES AND THE NEW  
01:26:41 16 FUNCTIONALITY IN THE ARISTA SWITCHES, RIGHT? THE CORE COMMANDS  
01:26:44 17 THAT MR. SADANA IS TALKING ABOUT, THOSE ARE UTILITY FUNCTIONS  
01:26:48 18 THAT EXIST IN ANY SWITCH. AND ALL THE NETWORK SWITCH PROVIDERS  
01:26:53 19 HAVE THOSE AND THEY ARE ALL USING THE SAME SET OF THOSE CORE  
01:26:57 20 COMMANDS. NOTHING UNIQUE ABOUT THAT.

01:26:59 21 NOW, I WOULD SUBMIT THAT EVEN IF YOU GO TO THE MULTIWORD  
01:27:03 22 COMMANDS, THOSE AREN'T ORIGINAL EITHER.

01:27:05 23 LET'S GO TO THE NEXT ONE.

01:27:09 24 155 OF THE 500 ARE SHOW COMMANDS. THE WORD "SHOW," WHICH  
01:27:14 25 IS NOT UNIQUE, OR ORIGINAL TO THEM, AND FOLLOWED BY A NOUN.

01:27:21 1 ONE OF THE OTHER THINGS THAT JUDGE FREEMAN'S INSTRUCTION  
01:27:23 2 SAYS, AND I FORGOT TO PUT THIS ON THE SLIDE, WAS THE IDEA OR  
01:27:27 3 METHOD OF GROUPING OR CLUSTERING COMMANDS UNDER COMMON INITIAL  
01:27:31 4 WORDS LIKE SHOW OR IP. NOT PROTECTABLE. AGAIN, NOT  
01:27:36 5 PROTECTABLE.

01:27:36 6 "SHOW" HAS BEEN AROUND FOREVER, AS MR. LOUGHEED ADMITTED,  
01:27:40 7 155 OF THESE ARE "SHOW" COMMANDS. HE WORKED ON A NUMBER OF  
01:27:43 8 SYSTEMS AT STANFORD, THIS IS JUST ONE, THAT HAD A "SHOW"  
01:27:46 9 COMMAND. YES, IT DID, IT HAD A "SHOW" COMMAND, HE TESTIFIED  
01:27:51 10 THERE WERE OTHERS AS WELL, WHILE HE WORKED AT STANFORD.

01:27:54 11 HE ALSO TESTIFIED THAT SOME OF THE COMMANDS HE SIMPLY  
01:27:57 12 COPIED FROM OTHER SYSTEMS.

01:27:59 13 REMEMBER WE FOUND A MANUAL IN HIS POSSESSION THAT HAD 7 OR  
01:28:03 14 8 OF THESE COMMANDS, VERBATIM IN THERE, HE SAID THAT'S A  
01:28:07 15 COINCIDENCE, OKAY. BUT IN THIS CASE, IN THE CISCO CLI, HE USED  
01:28:11 16 A MULTIWORD COMMAND, HE HAD PREVIOUSLY USED AT ANOTHER COMPANY.

01:28:18 17 AGAIN, THESE ARE ROUTINE COMMON DESCRIPTIONS THAT INDUSTRY  
01:28:22 18 HAS ADOPTED FOR USE AND HAVE BEEN IN USE FOR YEARS.

01:28:26 19 ALL RIGHT. I WANT TO TALK ABOUT TWO LEGAL CONCEPTS THAT  
01:28:28 20 ARE A BIG PART OF YOUR CONSIDERATION OF INFRINGEMENT. MERGER  
01:28:33 21 AND SCÈNES À FAIRE. WHAT ARE THEY? THIS IS RELATED TO THIS  
01:28:36 22 CONCEPT OF PROTECT.

01:28:41 23 MERGER SAYS IF THERE'S ONLY A FEW WAYS TO EXPRESS  
01:28:45 24 SOMETHING, YOU CAN'T PROTECT IT. IT CAN BE USED BY OTHERS.

01:28:47 25 WHY IS THAT? BECAUSE IF WE ARE TALKING ABOUT DESCRIBING

01:28:50 1 SOMETHING LIKE THE INTERNET PROTOCOL, IP, WHICH HAS BEEN AROUND  
01:28:55 2 AND IN USE FOR YEARS, IT'S NOT RIGHT FOR ONE AUTHOR TO HAVE  
01:28:59 3 CONTROL OF THAT. RIGHT? DO WE WANT 40 DIFFERENT NETWORK  
01:29:02 4 SWITCH VENDORS TO HAVE TO COME UP WITH A DIFFERENT WAY TO SAY  
01:29:06 5 IP? OF COURSE NOT.

01:29:07 6 SO THIS MERGER CONCEPT IS IMPORTANT AS PART OF COPYRIGHT  
01:29:11 7 INFRINGEMENT. IF THERE'S ONLY A FEW WAYS TO DO IT, IT'S NOT  
01:29:15 8 PROTECTABLE. THAT'S RELATED TO SCÈNES À FAIRE.

01:29:18 9 SCÈNES À FAIRE MEANS COMMONLY USED TOOLS OF THE TRADE,  
01:29:22 10 THINGS THAT FOLKS USE OVER AND OVER. AND THIS ONE SAYS, IF  
01:29:26 11 THERE WERE EXTERNAL FACTORS THAT LIMIT YOUR CHOICE, YOU CAN'T  
01:29:30 12 PROTECT THE PRODUCT OF THAT.

01:29:32 13 AGAIN, THESE COMMANDS ARE ALL DESCRIBING FEATURES THAT ARE  
01:29:39 14 INDUSTRY PROTOCOLS THAT HAVE BEEN PUBLISHED IN PROTOCOL  
01:29:42 15 DOCUMENTS AND KNOWN BY NETWORK ENGINEERS FOR YEARS.

01:29:45 16 SO THE IDEA HERE IS, IF YOU FIND, WHICH THE EVIDENCE FULLY  
01:29:48 17 SUPPORTS AND WE WILL ROLL THROUGH IT IN A MINUTE, IF YOU FIND  
01:29:52 18 THAT THERE WERE VERY FEW CHOICES AND THEY WERE LIMITED AND  
01:29:56 19 THERE'S ONLY A FEW WAYS TO SAY SOMETHING THAT'S ALREADY IN  
01:30:00 20 EXISTENCE AND ALREADY BEEN APPROVED, THE PRACTICAL REALITIES OF  
01:30:03 21 COMPUTER PROGRAMMING MEAN YOU CAN'T PROTECT STUFF LIKE "SHOW  
01:30:10 22 INTERFACE" OR "SHOW IP ROUTE" OR EVEN SOME OF THE MORE  
01:30:14 23 COMPLICATED ONES, WHICH AGAIN, COME RIGHT FROM THE STANDARDS  
01:30:19 24 THEMSELVES.

01:30:20 25 LET'S GO TO THIS NEXT ONE. HERE'S MY POINT. WE DID THIS

01:30:24 1 WITH DR. ALMEROOTH.

01:30:25 2 ON THE LEFT ARE SOME OF THE COMMANDS THEY'RE ASSERTING  
01:30:28 3 "ROUTER OSPF," "ROUTER ID," "SHOW IP OSPF." OSPF MEANS OPEN  
01:30:33 4 SHORTEST PATH FIRST.

01:30:34 5 AND I'VE GOT AN EXHIBIT NUMBER THERE, IT'S TX 5038. HERE  
01:30:41 6 IT IS. THAT'S A 40 OR 50-PAGE DOCUMENT, THE INDUSTRY CAME  
01:30:45 7 TOGETHER AND CREATED IT. IT EXISTED BEFORE ANY OF THESE  
01:30:48 8 COMMANDS THAT CISCO IS CLAIMING DID.

01:30:50 9 AND WHAT'S THE IDEA? THE IDEA IS THE INDUSTRY CALLS IT  
01:30:55 10 OSPF, THEY HAVE ALREADY ADOPTED THAT TERM. SO ARE WE GOING TO  
01:30:59 11 GIVE CISCO THE EXCLUSIVE RIGHT TO USE THAT? OF COURSE NOT.  
01:31:03 12 THEN THE SECOND GUY HAS TO SPELL IT OUT, AND THE THIRD GUY HAS  
01:31:07 13 TO FIND ANOTHER WORD, AND THE FOURTH, AND THE FIFTH AND THE  
01:31:09 14 SIXTH. YOU COULD SEE HOW RIDICULOUS THAT WOULD BE. CRAZY.

01:31:14 15 NOT ONLY THAT, I'VE GOT IN GREEN, THE TIMES OSPF IS USED.  
01:31:18 16 BUT YOU JUST GO TO PAGE 3 OF THIS THING. DR. ALMEROOTH DIDN'T  
01:31:22 17 LIKE THIS ONE BIT, BUT PAGE 3, I'VE GOT IT UP THERE ON THE  
01:31:25 18 SCREEN, IT'S GOT A LOT OF DEFINED TERMS THAT YOU USE WITH OSPF.  
01:31:30 19 "ROUTER," THAT'S DEFINED TERM, "ROUTER ID," "INTERFACE,"  
01:31:35 20 "NEIGHBORING," "HELLO PROTOCOL," "HELLO INTERVAL" IS ON THE  
01:31:38 21 NEXT PAGE. THEY ARE ALL DEFINED TERMS.

01:31:41 22 LET'S GO BACK -- I DON'T HAVE A SLIDE ON IT, MR. DAHM, I'M  
01:31:45 23 SORRY.

01:31:46 24 BUT YOU CAN GO THROUGH HERE AND THEY ARE ALL THE SAME.  
01:31:48 25 LET'S TAKE A LOOK AT A LONGER ONE RIGHT ON THIS PAGE, "SHOW

01:31:52 1 IP." "SHOW" COMMONLY USED, "IP" MEANS INTERNET PROTOCOL.

01:31:58 2 THERE'S A PROTOCOL JUST LIKE THIS FOR IP, AND WHAT'S IT CALLED?

01:32:01 3 IP.

01:32:01 4 OSPF RUNS OVER THE IP PROTOCOL, THAT'S WHY THEY ARE

01:32:04 5 TOGETHER. AND "INTERFACE" IS A DEFINED TERM.

01:32:07 6 THIS HAPPENS OVER, AND OVER, AND OVER IN THESE 500

01:32:10 7 COMMANDS, WHICH IS WHY THEY ARE JUST ROUTINE, NOT PROTECTABLE,

01:32:14 8 AND NOT ORIGINAL.

01:32:16 9 NEXT SLIDE.

01:32:17 10 HERE'S ANOTHER ONE. IGMP, THAT'S ANOTHER ONE. AND THAT'S

01:32:21 11 IN TX 6877, I WENT OVER THAT WITH DR. ALMEROOTH, INTERNET GROUP

01:32:27 12 MANAGEMENT PROTOCOL. RIGHT IN THE TITLE, THAT GREEN PULLOUT IS

01:32:31 13 THE TITLE OF THE PROTOCOL. IT USES IGMP. THE INDUSTRY HAS

01:32:36 14 COME TOGETHER AND DECIDE THAT'S A SUITABLE TERM TO USE.

01:32:39 15 NOW, ARE YOU REQUIRED TO USE IT? NO. I MEAN, YOU ARE NOT

01:32:43 16 FORCED TO USE IT. BUT SINCE THE INDUSTRY IS USING IT, AND

01:32:49 17 SINCE THE IDEA IS WE ARE GOING TO SUPPORT THAT PROTOCOL IN OUR

01:32:52 18 SWITCH, YOU WANT A NETWORK ENGINEER TO BE FAMILIAR WITH IT.

01:32:56 19 SO LOOK AT THESE ONES, THESE ARE LONGER. "QUERY

01:32:59 20 INTERVAL." "STARTUP-QUERY INTERVAL." "START-UP QUERY COUNT,"

01:33:03 21 IF IT WERE UP TO DR. ALMEROOTH, NONE OF US WOULD EVER KNOW THAT

01:33:09 22 THESE CAME DIRECTLY, WORD-FOR-WORD, AS PHRASES OUT THE

01:33:13 23 PROTOCOL.

01:33:13 24 HE WANTED TO PRETEND THAT THIS WAS THE CREATIVE GENIUS OF

01:33:16 25 SOMEONE CREATING THESE COMMANDS. BALONEY. THESE ALL COME

01:33:19 1 RIGHT FROM THE DEFINED TERMS.

01:33:19 2 NEXT PAGE, PLEASE.

01:33:21 3 EVEN THE LONG ONES. "LAST MEMBER QUERY INTERVAL," THAT'S  
01:33:25 4 A DEFINED TERM IN THIS PROTOCOL. "LAST MEMBER QUERY COUNT." A  
01:33:29 5 DEFINED TERM IN THIS PROTOCOL.

01:33:34 6 NOW WE SPENT QUITE A BIT OF TIME ON THAT WITH  
01:33:37 7 DR. ALMEROTH, AND I'M NOT GOING TO REPEAT IT ALL HERE, BUT I  
01:33:40 8 WILL SHOW ON THIS NEXT SLIDE, THERE ARE A LOT OF PROTOCOLS, AND  
01:33:42 9 YOU CAN'T FIND A COMMAND IN HERE THAT DOESN'T COME FROM ONE OR  
01:33:46 10 THE OTHER OF THESE IN SOME WAY.

01:33:49 11 "SNMP" MEANS SIMPLE NETWORK MANAGEMENT PROTOCOL. "IPV6,"  
01:33:54 12 INTERNET PROTOCOL VERSION SIX. "ARP" ON THE RIGHT, ADDRESS  
01:33:58 13 RESOLUTION PROTOCOL. THESE ARE ALL STANDARD PROTOCOLS, I HAVE  
01:34:03 14 THE TX NUMBERS, AND THE IDEA IS THAT FOLKS USE THEM BECAUSE  
01:34:09 15 THEY ARE WHAT THE INDUSTRY HAS DECIDED TO USE TO DESCRIBE THAT  
01:34:14 16 PROTOCOL.

01:34:14 17 HERE'S WHAT MR. CATO SAID, THIS WAS ON VIDEO ALSO. AND  
01:34:19 18 HERE'S THE REAL IDEA, HE'S TALKING ABOUT A VLAN, THAT'S NOT A  
01:34:23 19 PROTOCOL, BUT IT'S A FEATURE. IT MEANS "VIRTUAL LOCAL AREA  
01:34:28 20 NETWORK." WHAT HE'S SAYING IS IF I PUT A VLAN IN MY SWITCH, IF  
01:34:32 21 I SUPPORT IT, THEN IN ORDER FOR THE NETWORK FOLKS TO UNDERSTAND  
01:34:36 22 WHAT I'VE GOT, I'VE GOT TO USE VLAN IN THE CLI ALONG WITH THE  
01:34:43 23 PARAMETERS NECESSARY TO STRUCTURE IT SO IT WILL INTEROPERATE  
01:34:46 24 ACROSS MULTIPLE SWITCHES.

01:34:48 25 HE'S SAYING IF THE GOAL OF THE COMMAND IS TO DESCRIBE A



01:34:51 1 FEATURE LIKE VLAN, YOU ARE GOING TO USE THE NAME THAT THE  
01:34:56 2 INDUSTRY HAS CHOSEN TO DESCRIBE IT, TIME, AFTER TIME, AFTER  
01:35:01 3 TIME.

01:35:02 4 NOW, GUESS WHAT, THE EVIDENCE SHOWS -- LET'S GO TO THE  
01:35:07 5 NEXT SLIDE. THE EVIDENCE SHOWS THAT EVEN AT CISCO THEY  
01:35:10 6 UNDERSTOOD THIS AND THEY TOLD THEIR ENGINEERS DON'T BE  
01:35:14 7 CREATIVE, BE COMMON, BE FAMILIAR.

01:35:18 8 THIS IS FROM THAT FAMOUS PARSER-POLICE MANIFESTO. WHEN  
01:35:23 9 NAMING A COMMAND, TRY TO PICK NAMES THAT WOULD BE FAMILIAR TO  
01:35:26 10 PEOPLE IN THE INDUSTRY. COMMANDS SHOULD BE SELF-EXPLANATORY SO  
01:35:31 11 THAT A KNOWLEDGEABLE USER, THAT'S THESE NETWORK OPERATORS, CAN  
01:35:36 12 FIGURE IT OUT WITHOUT SCURRYING OFF TO A MANUAL.

01:35:40 13 USE "AN ACCEPTED INDUSTRY ACRONYM." THAT'S JUST WHAT I  
01:35:45 14 WAS TALKING ABOUT, ALL THOSE PROTOCOL NAMES ARE ACCEPTED  
01:35:48 15 INDUSTRY ACRONYMS, THEY ARE TOLD TO USE THEM. DO NOT USE CODE  
01:35:50 16 NAMES.

01:35:52 17 NOW, THAT WAS THE GUIDANCE, BUT IN FACT, MR. REMAKER  
01:35:58 18 CONFIRMED THAT THAT'S WHAT THEY DID. HIS TESTIMONY WAS, THIS  
01:36:02 19 IS WHAT WE DO WHEN WE WRITE THESE COMMANDS. WE DON'T FREELANCE  
01:36:05 20 OR OFFROAD. KEEP IT SHORT. WHY? YOU ARE TYPING IT. AVOID  
01:36:11 21 COLLISIONS. WHAT HE SAID WAS "YOU DON'T USE THE SAME WORD  
01:36:14 22 TWICE AND MESS UP THE DEVICE."

01:36:16 23 CONSIDER THE AUDIENCE. WHAT DO NETWORK ENGINEERS  
01:36:19 24 UNDERSTAND? DO THEY WANT YOU TO WRITE OUT OSPF OR USE SOME  
01:36:24 25 OTHER WORD OR SOME OTHER NAME? NO. AND ARRANGED AND GROUPED

01:36:29 1 IN A LOGICAL EASY TO FIND ORDER.

01:36:32 2 IN OTHER WORDS, THESE ARE SOME OF THE LIMITATIONS.

01:36:34 3 AND MR. KATHAIL BACKED THAT UP. HE SAID THE COMMANDS  
01:36:39 4 SHOULD COME FROM A VOCABULARY WHICH NETWORKERS USE DAY IN AND  
01:36:44 5 DAY OUT. THAT'S TRUE. IF YOU ARE TALKING ABOUT HOCKEY, YOU  
01:36:46 6 USE THE LANGUAGE OF HOCKEY. IF YOU ARE TALKING ABOUT  
01:36:48 7 NETWORKING, YOU USE THE LANGUAGE OF NETWORKING THAT NETWORK  
01:36:51 8 ENGINEERS ARE ALL FAMILIAR WITH.

01:36:54 9 AND THAT'S -- THAT IS TRUE FOR ALL OF THESE COMMANDS,  
01:36:57 10 WHICH IS WHY NONE OF THIS IS PROTECTABLE. EITHER A SINGLE  
01:37:03 11 MULTIWORD COMMAND, JUDGE FREEMAN HAS ALREADY TOLD YOU THAT, OR  
01:37:07 12 THE COMPILATION ITSELF. THE COMPILATION IS NO DIFFERENT. IT'S  
01:37:11 13 JUST A COLLECTION OF THESE COMMANDS, ALSO FROM INDUSTRY  
01:37:15 14 STANDARD PROTOCOLS.

01:37:17 15 COULD I GO BACK TO THE COLOR-CODED CHART, MR. DAHM.

01:37:21 16 THE LAST POINT I'M GOING TO MAKE ON THIS PART OF IT IS  
01:37:24 17 THAT AT LEAST SOMEONE MADE AN EFFORT TO ANALYZE THIS. AND THAT  
01:37:28 18 WAS PROFESSOR BLACK. AND HE WENT THROUGH THEM ALL, HE  
01:37:31 19 PRESENTED SOME OF THESE, BUT EVERYTHING IN GREEN IS DIRECTLY  
01:37:35 20 FROM AN INDUSTRY STANDARD. DIRECTLY. EVERYTHING IN GRAY THAT  
01:37:40 21 MR. NELSON WAS CALLING THAT THE BROWN STUFF, THAT'S ALL COMMON  
01:37:44 22 TERMINOLOGY THAT PRE-EXISTED. "CLEAR," "CLOCK," "SHOW."

01:37:50 23 THE BLUE DON'T NECESSARILY COME DIRECTLY FROM A PROTOCOL,  
01:37:55 24 BUT THEY ARE COMMON INDUSTRY TERMS THAT ANY NETWORKING ENGINEER  
01:37:58 25 WOULD UNDERSTAND. "CONTROL PLANE," "TIME ZONE," "DYNAMIC,"

01:38:02 1 "ROUTE," "MROUTE," ET CETERA, ET CETERA, ET CETERA.

01:38:07 2 SO THE POINT HERE, LADIES AND GENTLEMEN, IS COPYING IS NOT  
01:38:12 3 COPYRIGHT INFRINGEMENT UNLESS YOU ARE COPYING SOMETHING THAT'S  
01:38:15 4 PROTECTED AND ORIGINAL, AND THAT NEVER HAPPENED HERE.

01:38:18 5 LET ME TALK ABOUT ONE OTHER TOPIC IN THIS SAME AREA, THAT  
01:38:23 6 IS THE HELP STRINGS. THE HELP STRINGS. LET'S GO FORWARD TO  
01:38:27 7 THE HELP STRINGS SLIDE WITH DR. ALMEROOTH.

01:38:32 8 REMEMBER THE HELP STRINGS ARE ALSO NOT INDIVIDUALLY  
01:38:35 9 PROTECTABLE. BUT THEY ARE CLAIMING A COMPILATION. AND HERE'S  
01:38:39 10 WHERE I WANT TO PAUSE AND SAY THAT DR. ALMEROOTH'S TESTIMONY  
01:38:42 11 OVERALL IS OF NO VALUE. HE IS TRULY JUST AN ADVOCATE FOR  
01:38:50 12 CISCO. HE CAME IN HERE PRETENDING TO BE INDEPENDENT.

01:38:53 13 IN FACT, HE'S HAD A FINANCIAL RELATIONSHIP WITH CISCO FOR  
01:38:56 14 20 YEARS. AND AS YOU SAW DURING HIS EXAMINATIONS, THERE WERE  
01:39:01 15 TWO OF THEM, HE WOULDN'T AGREE TO THE SIMPLEST THING.

01:39:04 16 HERE HE IS SAYING THAT "DELETE A FILE," THAT PHRASE, IS  
01:39:07 17 ELEGANT.

01:39:08 18 AMONG WHAT YOU ARE ASSERTING ARE DELETE A FILE, RIGHT?  
01:39:11 19 ELEGANT.

01:39:12 20 RENAME A FILE, CREATIVE, RIGHT? ACCORDING TO DR. ALMEROOTH  
01:39:17 21 THAT'S CREATIVE.

01:39:19 22 CHANGE CURRENT DIRECTLY? ORIGINAL? YES.

01:39:25 23 TIME IN MINUTES. TIME IN MINUTES. THERE'S ANOTHER ONE ON  
01:39:29 24 THIS STRING OF CREATIVE? YES.

01:39:33 25 COME ON. COME ON. THAT KIND OF TESTIMONY MEANS YOU ARE

01:39:36 1 ONLY HERE TO BE AN ADVOCATE, NOT AN INDEPENDENT EXPERT.

01:39:41 2 AND MY POINT THERE IS THAT THE HELP DESCRIPTIONS OF WHICH  
01:39:45 3 BY THE WAY THERE ARE 52,000 IN IOS, AND SOMETHING LIKE 200 ARE  
01:39:52 4 ACCUSED HERE, THESE ARE TRIVIAL, THESE ARE TRULY TRIVIAL,  
01:39:57 5 INSIGNIFICANT, NOT PROTECTABLE, VERY COMMON.

01:40:00 6 OKAY. FINAL POINT, WE WILL MOVE ON, IS NOT EVEN THE  
01:40:04 7 MANUALS ARE TRULY ORIGINAL TO CISCO. THIS IS THE TESTIMONY OF  
01:40:08 8 MR. LOUGHEED, WHEN MR. SILBERT EXAMINED HIM, THAT WAS WAY BACK  
01:40:13 9 A COUPLE OF WEEKS AGO. WE ASKED HIM, YOU COPIED SUBSTANTIAL  
01:40:16 10 PORTIONS OF THE MANUAL, COPYRIGHTED TO STANFORD, TO CREATE THE  
01:40:20 11 CISCO MANUAL, RIGHT? THAT'S RIGHT.

01:40:24 12 NOW, DO I SAY THAT'S REALLY WRONG AND A TERRIBLE THING?  
01:40:28 13 NO, BECAUSE AGAIN, THE MANUAL ISN'T PROTECTABLE, MR. LOUGHEED  
01:40:32 14 DIDN'T TREAT IT AS PROTECTABLE, HE COPIED IT, HE FELT HE WAS  
01:40:37 15 FREE TO COPY IT. UNPROTECTABLE MATERIAL.

01:40:40 16 SO LET'S LOOK AT THE VERDICT FORM. AND I WANT TO EXPLAIN  
01:40:43 17 HOW THESE THINGS ARE RELATED.

01:40:47 18 SCÈNES À FAIRE AND MERGER ARE CLOSELY RELATED TO COPYRIGHT  
01:40:50 19 INFRINGEMENT. WE'VE SHOWN AND THE EVIDENCE SUPPORTS THAT  
01:40:52 20 NOTHING PROTECTED WAS COPIED.

01:40:54 21 IF YOU AGREE THE EVIDENCE SUPPORTS THAT, THE ANSWER ON  
01:40:57 22 QUESTION 1 IS NO. IF YOU ANSWER QUESTION 1 NO, YOU DON'T GO ON  
01:41:01 23 TO ANSWER QUESTION 2 AT ALL. YOU SKIP ON FURTHER IN THE  
01:41:05 24 VERDICT FORM, RIGHT?

01:41:06 25 AND SO OUR POINT ON QUESTION 1 IS NOTHING PROTECTABLE WAS

01:41:10 1 COPIED, PERIOD.

01:41:12 2 OUR POINT ON 2 IS, AND WE WILL TALK ABOUT FAIR USE IN A  
01:41:15 3 MINUTE BECAUSE THAT'S SEPARATE, SCÈNES À FAIRE AND MERGER ARE  
01:41:20 4 ANOTHER CONCEPTS AROUND THIS PROTECTABILITY, RIGHT? IF THERE'S  
01:41:25 5 ONLY ONE OR A FEW WAYS TO SAY, AND IF THERE'S LOTS OF EXTERNAL  
01:41:30 6 CONSTRAINTS, IT'S ALSO NOT INFRINGEMENT TO USE IT.

01:41:35 7 THE LAW ALLOWS USE OF THINGS BECAUSE AGAIN, IF THERE'S  
01:41:37 8 ONLY A FEW WAYS TO DO IT, YOU DON'T WANT TO GIVE ONE AUTHOR,  
01:41:42 9 PARTICULARLY HERE IN A FUNCTIONAL AREA, THE EXCLUSIVE RIGHT TO  
01:41:45 10 USE IT.

01:41:45 11 OKAY. LET'S TALK ABOUT FAIR USE. FAIR USE IS A  
01:41:49 12 COMPLETELY SEPARATE CONCEPT. FAIR USE IS PART OF THE COPYRIGHT  
01:41:55 13 STATUTE, AND IF A USE IS A FAIR USE, COPYING IS ALLOWED AND  
01:42:01 14 THERE IS NO INFRINGEMENT.

01:42:04 15 LET'S TAKE A LOOK AT THE NEXT SLIDE.

01:42:06 16 OKAY. HERE'S THE INSTRUCTION THAT YOU HEARD THIS MORNING.  
01:42:09 17 IT'S NUMBER 46. VERY IMPORTANT. SOMEONE WHO IS NOT THE OWNER  
01:42:13 18 OF THE COPYRIGHT, HERE THAT'S ARISTA, MAY USE A COPYRIGHTED  
01:42:18 19 WORK IN A REASONABLE WAY UNDER THE CIRCUMSTANCES WITHOUT THE  
01:42:23 20 CONSENT OF THE OWNER. THAT'S CISCO. IF IT WOULD ADVANCE THE  
01:42:27 21 PUBLIC INTEREST. IF IT WOULD ADVANCE THE PUBLIC INTEREST.

01:42:30 22 THE PUBLIC INTEREST HERE IS IN INNOVATION, FAIR USE IS  
01:42:34 23 INTENDED TO FOSTER INNOVATION. SUCH A USE IS CALLED A FAIR  
01:42:40 24 USE.

01:42:41 25 THEN THEY SAY IT AGAIN, THE OWNER OF A COPYRIGHT, THAT'S

01:42:43 1 CISCO, CANNOT PREVENT OTHERS FROM MAKING A FAIR USE OF THE  
01:42:48 2 OWNER'S COPYRIGHTED WORK.

01:42:50 3 AGAIN, IF THE USE IS A FAIR USE AND IN THE PUBLIC  
01:42:53 4 INTEREST, THEN THE OWNER DOESN'T HAVE THE RIGHT TO PREVENT IT.

01:42:57 5 NOW HOW ARE YOU GOING TO EVALUATE THAT? THE COURT HAS  
01:42:59 6 GIVEN YOU FOUR FACTORS, AND I PUT THEM ON A BOARD SO WE COULD  
01:43:04 7 WALK THROUGH THEM ALONG WITH THE SLIDES.

01:43:06 8 AND THIS WAS IN THE NEXT CONSTRUCTION. THERE THEY ARE.  
01:43:15 9 OKAY. FAIR USE.

01:43:18 10 ON THE LEFT IS THE FACTOR. ON THE RIGHT IS A LITTLE  
01:43:21 11 SUMMARY OF WHAT I'M GOING TO SAY ABOUT EACH ONE.

01:43:27 12 SO THE IDEA OF FAIR USE IS IT'S A SET OF FACTORS THAT YOU  
01:43:31 13 EVALUATE AND BALANCE TOGETHER. AND THE FIRST FACTOR IS THE  
01:43:34 14 PURPOSE AND CHARACTER OF THE USE. AND THAT ADDRESSES WHETHER A  
01:43:38 15 USE IS TRANSFORMATIVE OR WHETHER IT'S JUST A COPY, RIGHT?

01:43:44 16 OBVIOUSLY, IF YOU KNOCK OFF A CD OR YOU COPY A MOVIE OR  
01:43:48 17 SOMETHING LIKE THAT, THAT'S NOT FAIR USE, YOU ARE JUST COPYING  
01:43:51 18 AND TAKING ADVANTAGE.

01:43:53 19 BUT, IF YOU TAKE A LIMITED AMOUNT OF MATERIAL AND TURN IT  
01:44:00 20 INTO SOMETHING TRANSFORMATIVE, THAT FAVORS FAIR USE BECAUSE  
01:44:04 21 AGAIN, IT FAVORS INNOVATION AND THAT'S WHAT FAIR USE IS SEEKING  
01:44:10 22 TO DO. WE ARE GOING TO GO THROUGH THAT FACTOR IN A MINUTE.

01:44:13 23 THE NATURE OF THE COPYRIGHTED WORK, THAT ADDRESSES, IS  
01:44:15 24 THIS SOMETHING NEAR THE HEART OF CREATIVE WORK LIKE ART OR  
01:44:20 25 POETRY OR MOVIES OR BOOKS, OR IS IT MORE FACTUAL OR FUNCTIONAL,

01:44:26 1 LIKE COMPUTER PROGRAMS.

01:44:27 2 IF IT'S MORE LIKE ART, IT'S MORE HEAVILY PROTECTED. IF  
01:44:31 3 IT'S MORE LIKE FUNCTIONAL, THAT FAVORS FAIR USE.

01:44:37 4 HOW MUCH WAS TAKEN? THE AMOUNT AND SUBSTANTIALITY OF THE  
01:44:41 5 PORTION USED. IF YOU KNOCK OFF THE WHOLE -- YOU BOOTLEG A CD,  
01:44:46 6 YOU KNOCK OFF THE WHOLE THING. AGAIN, THAT'S NOT FAIR USE.  
01:44:49 7 BUT IF A SMALL FRACTION OF THE COMPILATION OR THE COPYRIGHTED  
01:44:53 8 WORK IS INVOLVED, THAT FAVORS FAIR USE.

01:44:56 9 AND THE LAST FACTOR GOES TO WHETHER OR NOT THE USE IN THIS  
01:45:00 10 CASE OF THE CLI CAUSED ANY MARKET HARM.

01:45:03 11 NOW THESE FACTORS AREN'T EXCLUSIVE. AND ONE OF THE KEY  
01:45:08 12 FACTORS IS WHAT WOULD A REASONABLE COPYRIGHT OWNER WOULD HAVE  
01:45:12 13 THOUGHT WAS FAIR. WE KNOW WHAT THE COPYRIGHT OWNER HERE  
01:45:14 14 THOUGHT WAS FAIR BECAUSE CISCO MADE A CONSCIENCE BUSINESS  
01:45:17 15 CHOICE TO PROMOTE THE CLI AS INDUSTRY STANDARD. THAT FITS IN  
01:45:22 16 TO ANOTHER FACTOR.

01:45:23 17 OKAY. LET'S WALK THROUGH THESE. AND THE FIRST ONE I  
01:45:27 18 TALKED ABOUT BEFORE LUNCH. TRANSFORMATIVE USE, RIGHT?

01:45:33 19 THEY TOOK -- THEY USED A SMALL NUMBER OF COMMANDS TO  
01:45:35 20 CREATE SOMETHING VERY DIFFERENT. AND NOT ONLY IS THE SWITCH  
01:45:39 21 DIFFERENT, NAMELY, THE HIGH SPEED NETWORKING IN THE CLOUD, BUT  
01:45:43 22 THE CLI WERE TRANSFORMED TOO. FULLY AUTOMATED SO THAT YOU  
01:45:47 23 DIDN'T HAVE TO CONFIGURE ONE SWITCH AT A TIME.

01:45:50 24 THIS IS THE DEFINITION OF TRANSFORMATIVE USE. IT'S  
01:45:54 25 TRANSFORMATIVE IF IT ADDS SOMETHING NEW WITH A FURTHER PURPOSE

01:45:57 1 OR DIFFERENT CHARACTER.

01:45:59 2 NOW I KNOW THAT CISCO IS GOING TO SAY, WELL, WAIT A  
01:46:01 3 MINUTE, IT'S JUST A SWITCH, SO IT'S NOT ANYTHING NEW.

01:46:04 4 WELL, NO, IT'S NOT JUST A SWITCH, THIS SWITCH HAS CHANGED  
01:46:08 5 THE INDUSTRY WHICH IS GOING THROUGH A HUGE MARKET TRANSITION.

01:46:13 6 JUST LIKE WHEN SMART PHONES CAME ALONG, YEAH, IT'S A PHONE, BUT  
01:46:18 7 VERY DIFFERENT FROM A CELL PHONE. MUCH MORE FUNCTIONALITY.

01:46:22 8 MANY MORE FEATURES. TESLA CAME ALONG, RIGHT? THAT'S JUST A  
01:46:26 9 CAR, WE SAY, JUST A CAR, BUT IT MIGHT CHANGE EVERYTHING.

01:46:30 10 GO BACK IN TIME WHEN MAC CAME ALONG, WHEN COMPUTERS CAME  
01:46:35 11 ALONG, TYPEWRITERS, WHAT HAPPENED TO THEM? IT'S JUST A MACHINE  
01:46:39 12 FOR ENTERING DATA. WELL, NO, IN FACT, IT'S TRANSFORMATIVE.

01:46:41 13 AND THAT'S THE WHOLE POINT OF THIS JURY INSTRUCTION IS TO  
01:46:45 14 FOCUS YOU ON THAT.

01:46:48 15 AND AS DR. BLACK SAID, THIS IS TRANSFORMATIVE BECAUSE  
01:46:51 16 IT'S -- NO ONE ELSE WAS ABLE TO SELECT A SMALL NUMBER OF  
01:46:55 17 COMMANDS, ADD THOUSANDS OF OTHER COMMANDS, ADD NEW FEATURES AND  
01:46:59 18 FUNCTIONS, FULLY AUTOMATE THE CLI, PUT IT ON TOP OF A LINUX  
01:47:06 19 KERNEL TO MAKE IT PROGRAMMABLE LIKE YOUR SMART PHONE IS, IF YOU  
01:47:10 20 WANT TO DOWNLOAD APPS ON IT, THAT'S WHAT ALL THE WITNESSES HAVE  
01:47:14 21 TESTIFIED TO.

01:47:15 22 NOW, I DON'T WANT TO REPEAT EVERYTHING I SAID THIS  
01:47:17 23 MORNING, BUT LET ME JUST SHOW A LITTLE BIT OF ADDITIONAL  
01:47:20 24 EVIDENCE OF THIS POINT.

01:47:21 25 ONE, WE HAVE MR. REMAKER, AGAIN, "ARISTA HAS AN XMPP BASED



01:47:26 1 CLI," THAT MEANS A NEW TYPE OF CLI THAT'S AUTOMATED. "VERY  
01:47:30 2 COOL. WISH WE DID THIS. WISH WE HAD DONE THIS. MAYBE WE  
01:47:35 3 STILL CAN."

01:47:36 4 THAT'S MR. REMAKER.

01:47:38 5 MR. PATIL, THIS WAS TESTIMONY, THIS ISN'T A TRIAL EXHIBIT  
01:47:43 6 THAT, LAST ONE BY THE WAY WAS TRIAL EXHIBIT 5161, THAT WAS  
01:47:47 7 MR. REMAKER'S COMMENT, 5161.

01:47:49 8 THIS IS TESTIMONY. ON THE STAND, ON THE VIDEO. "WHAT DID  
01:47:54 9 YOU LEARN ABOUT ARISTA'S EOS PRODUCT FROM YOUR RESEARCH?"

01:47:57 10 "THEY HAVE CREATED A NON MONOLITHIC SWITCHING OPERATING  
01:48:02 11 SYSTEM WHICH IS VERY RESILIENT AND HIGHLY AVAILABLE, THAT MEANS  
01:48:05 12 RELIABLE, AND ON MOST OF THE TIME. AND PERFORMS AT AN  
01:48:10 13 IMPRESSIVE METRICS LEVEL."

01:48:13 14 HIGH SPEED, HIGH RELIABILITY, LOW POWER USE, THAT'S PATIL.

01:48:17 15 LOOK AT THIS NEXT ONE. REMEMBER WHEN MR. CHAMBERS WAS  
01:48:20 16 HERE, WE LOOKED AT THIS. THIS WAS THE COST SHEET WITH HIS  
01:48:25 17 PICTURE ON IT AND THE PICTURE OF THE GUY AT MICROSOFT THAT HE  
01:48:30 18 WAS GOING TO VISIT. THIS IS A VISIT THEY WERE GOING TO MAKE TO  
01:48:33 19 MICROSOFT.

01:48:34 20 THIS IS WHAT CISCO SAID, CISCO SAID IN 2012.

01:48:36 21 AND THIS IS TX 5495. "ARISTA IS OUTPERFORMING CISCO ON  
01:48:40 22 PRICE, PRODUCT, ROAD MAP, VISION." PRICE, PRODUCT, ROAD MAP,  
01:48:44 23 VISION. WHAT ELSE IS THERE? WHAT ELSE IS THERE? EVEN  
01:48:49 24 MR. CHAMBERS COULDN'T COME UP WITH ANYTHING BEYOND IS THAT.  
01:48:53 25 AND AGAIN, THAT'S HIGH PRAISE FROM YOUR COMPETITION.

1 NOW THERE IS ONE ASPECT OF THIS FIRST FACTOR THAT COUNTS  
2 AGAINST FAIR USE, AND LET'S PUT THAT OUT THERE TOO.

3 COMMERCIAL. IS THIS A COMMERCIAL PRODUCT? SURE, IT IS,  
4 ABSOLUTELY. ABSOLUTELY, ARISTA IS SELLING IT FOR MONEY.

5 HOWEVER, THIS IS JURY INSTRUCTIONS 49. VERY IMPORTANT.

6 COMMERCIAL USE WEIGHS AGAINST FAIR USE. THAT'S TRUE.

7 HOWEVER, THE MORE TRANSFORMATIVE THE NEW WORK, THE LESS WILL BE  
8 THE SIGNIFICANCE OF OTHER FACTORS LIKE COMMERCIALISM.

9 THE CONCEPT HERE IS, IF YOU ARE MAKING A BIG CHANGE, AND  
10 IF YOU ARE CHANGING, MAKING A TRANSITION, THEN THE COMMERCIAL  
11 NATURE OF IT IS LESS IMPORTANT.

12 WHEN COMPUTERS CAME ALONG AND REPLACED TYPEWRITERS, THAT  
13 WAS A HUGE TRANSITION. AND CERTAINLY THERE WAS AN IMPACT ON  
14 TYPEWRITER SALES. BUT UNDER THE FAIR USE LAW, WE ARE TRYING TO  
15 ENCOURAGE THAT TYPE OF THING. AND SO THE COMMERCIALISM IS LESS  
16 IMPORTANT. BUT DON'T GET ME WRONG, IT'S A COMMERCIAL PRODUCT  
17 FOR SURE.

18 FACTOR TWO, IS IT INFORMAL OR CREATIVE?

19 OKAY. WE KNOW WHAT IT IS HERE. THESE ARE COMMANDS  
20 ENTERED INTO A SYSTEM TO COMMUNICATE WITH A SWITCH. THAT IS  
21 NOT SHAKESPEARE, THAT IS NOT POETRY, THAT IS NOT SOMETHING AT  
22 THE HEART OF THE CREATIVE PROCESS, IT'S A NERD KNOB, RIGHT?  
23 THAT'S WHAT OUR NEXT SLIDE SHOWS.

24 THE NEXT SLIDE IS WHAT WE HEARD FROM DR. BLACK, IT'S A  
25 NERD KNOB. IT'S THE LABELS. IT'S THE LABELS ON THE DIALS,

01:50:25 1 IT'S NOT HOW THE DEVICE WORKS. IT'S A FUNCTIONAL THING.

01:50:31 2 FACTOR THREE, THE AMOUNT AND SUBSTANTIALITY OF THE PORTION  
01:50:34 3 USED.

01:50:34 4 OKAY. LET'S TAKE A LOOK AT THAT. HERE'S THE DISPUTED  
01:50:38 5 COMMANDS. WHY ARE THERE ONLY 441 AND NOT 506? BECAUSE THIS IS  
01:50:43 6 JUST IOS. IOS -- THEY HAVE FOUR OPERATING SYSTEMS HERE, THEY  
01:50:48 7 HAVE ADDED THEM UP TO GET TO THE 500. THERE'S 441 COMMANDS IN  
01:50:53 8 IOS. THAT'S LESS THAN THREE PERCENT OF ALL THE COMMANDS IN  
01:50:57 9 IOS. THERE'S 16,000 COMMANDS IN IOS. AND YOU WILL SEE THAT  
01:51:04 10 NUMBER IN THE EVIDENCE THERE AT TRIAL EXHIBIT 7543. THAT'S  
01:51:09 11 WHERE THE 16,000 NUMBER IS AT PAGE 14. OKAY. THAT'S THE  
01:51:13 12 COMMANDS.

01:51:15 13 AND AGAIN, AS I SAID, THERE'S NO EVIDENCE THAT THIS SET OF  
01:51:18 14 COMMANDS THAT ARE BEING USED AT ARISTA ARE ANYTHING SPECIAL OR  
01:51:22 15 UNIQUE OR DIFFERENT.

01:51:24 16 OKAY. LET'S LOOK AT THE OTHER TWO CATEGORIES, HELP  
01:51:28 17 DESCRIPTIONS, DR. BLACK TESTIFIED THERE'S 52,000 OF THOSE, THEY  
01:51:32 18 ARE COMPLAINING ABOUT 216. THAT'S LESS THAN 1 PERCENT.

01:51:35 19 AND AS I SAID, THESE ARE ROUTINE, COMMON, ORDINARY  
01:51:38 20 DESCRIPTIONS, NOT EVEN ENTITLED TO PROTECTION IN THE FIRST  
01:51:42 21 PLACE.

01:51:43 22 COMMAND OUTPUTS. AGAIN, DR. ALMEROOTH CONFIRMED THERE'S  
01:51:48 23 THOUSANDS OF THOSE. 37 AT ISSUE. THEY WENT THROUGH ALL THE  
01:51:51 24 COMMAND OUTPUTS, ALL OF THE THOUSANDS THAT THE EOS GENERATES  
01:51:56 25 AND THEY FOUND 37 TO COMPLAIN ABOUT, THAT'S IT.

01:51:59 1 EVEN THE MODES ARE A SMALL PERCENTAGE. THERE ARE MORE  
01:52:04 2 THAN 100 MODES IN IOS.

01:52:07 3 NEXT SLIDE, PLEASE.

01:52:10 4 THAT'S WHAT DR. ALMEROOTH SAID THEY ARE COMPLAINING ABOUT  
01:52:13 5 FOUR.

01:52:13 6 AND SIMILARLY WITH THE TECHNICAL MANUALS, REMEMBER IN THE  
01:52:17 7 OPENING AND THIS IS STILL TRUE, THERE'S ONE SNIPPET THEY FOUND  
01:52:21 8 OUT OF A 5 OR 600 PAGE MANUAL. THIS IS THE MANUAL THAT THAT  
01:52:24 9 SNIPPET IS FOUND IN. THEY WENT THROUGH THE WHOLE THING.  
01:52:27 10 THERE'S THE GREEN TAB, THEY FOUND TWO OR THREE LINES.

01:52:32 11 AGAIN, TRULY TRIVIAL. INSIGNIFICANT.

01:52:36 12 NOW, ARISTA DOESN'T TOLERATE PLAGIARISM, SO AS YOU NOW  
01:52:40 13 WELL KNOW THE EMPLOYEE THAT WAS INVOLVED IN THAT IS NO LONGER  
01:52:43 14 EMPLOYED.

01:52:44 15 ALL RIGHT. THE LAST FACTOR IS MARKET HARM.

01:52:46 16 AND AGAIN, THERE'S A GOOD JURY INSTRUCTION THAT EXPLAINS  
01:52:49 17 THIS, NUMBER 56. IF THE COPYRIGHTED MATERIAL IS  
01:52:55 18 TRANSFORMATIVE, MARKET SUBSTITUTION IS LESS CERTAIN AND MARKET  
01:52:58 19 HARM CANNOT BE PRESUMED.

01:53:00 20 WELL, AGAIN, TRANSFORMATIVE USE IS THE KEY. THE ISSUE  
01:53:03 21 HERE IS, IS THE USE OF THE CLI CAUSING CISCO ANY HARM? NO.  
01:53:09 22 AND OF COURSE NOT. THE REASON THESE SWITCHES ARE SELLING IS  
01:53:14 23 THEY ARE BETTER, THEY ARE FASTER, THEY ARE EASIER TO USE, THEY  
01:53:19 24 ARE PROGRAMMABLE AND CISCO MISS THE MARKET.

01:53:25 25 THIS IS WHAT THEIR EXPERT TOLD US, THE CLI CAN'T BE THE

01:53:28 1 REASON WHY ARISTA WON. SHE'S CONFIRMING WHAT I JUST SAID, THAT  
01:53:32 2 THE CLI ARE NOT THE REASON THAT PEOPLE ARE BUYING THESE  
01:53:36 3 SWITCHES. SHE SAID IT TWICE.

01:53:39 4 AND MR. CHAMBERS SAID, WE MISSED THE TRANSITION IN THIS  
01:53:46 5 MARKET. WE MISSED THE TRANSITION IN THIS MARKET. AND AS A  
01:53:49 6 RESULT OF THAT, THEY WEREN'T ABLE TO PROVIDE THE SERVICES AND  
01:53:52 7 PRODUCTS THEIR CLIENTS WANTED.

01:53:54 8 THAT HAS NOTHING TO DO WITH THE CLI. LET'S LOOK AT THE  
01:53:56 9 NEXT ONE.

01:53:57 10 HERE IS AN INTERNAL E-MAIL AT CISCO, FACEBOOK'S POSITION  
01:54:02 11 IS THAT CISCO IS BEHIND THE CURVE AND ON TARGET TO BECOME  
01:54:06 12 IRRELEVANT. ON TARGET TO BECOME IRRELEVANT, NOT A GOOD PLACE  
01:54:09 13 TO BE.

01:54:10 14 AGAIN, THEY MISSED THE MARKET. THIS HAS NOTHING TO DO  
01:54:13 15 WITH THE CLI. YOU WERE HERE WHEN CHRIS SUMMERS TESTIFIED LAST  
01:54:17 16 WEEK, THE YOUNG GUY WHO WAS THE FIELD SALES REP, FIELD SALES  
01:54:21 17 ENGINEER FOR ARISTA. WHAT HE SAID WAS, PEOPLE LIKE FACEBOOK DO  
01:54:24 18 THEIR OWN CLI. THEY WRITE THEIR OWN SCRIPTS. THEY WANT A CLI,  
01:54:29 19 SURE, BUT THEY DON'T CARE HOW COMMON OR FAMILIAR IT IS. IT  
01:54:33 20 DOESN'T HAVE TO BE CISCO-LIKE.

01:54:35 21 NOW SOME OF THEM HAVE SCRIPTS THAT EXIST, THEY DON'T WANT  
01:54:39 22 TO REWRITE THEM, BUT WHAT ALL THE TESTIMONY WAS FROM  
01:54:43 23 MR. SUMMERS AND MR. SADANA, AND EVEN FROM CISCO, THE MARKET IS  
01:54:47 24 MOVING AWAY FROM THE CLI AND CISCO JUST DIDN'T GET THERE FAST  
01:54:52 25 ENOUGH.

1           HERE'S THE MICROSOFT PART OF THE STORY -- THAT LAST ONE  
2           WAS FACEBOOK, TX 5219.

3           "WE HAVE FAILED TO DELIVER CRITICAL FEATURES FOR THE LAST  
4           FIVE MONTHS."

5           THAT'S GOT NOTHING TO DO WITH THE CLI. THEY FAILED TO  
6           DELIVER FEATURES THAT THE CLIENT WANTED.

7           ALL RIGHT. LET'S GO PASS THIS ONE.

8           OKAY. AGAIN, I THINK THESE FACTORS ALL WEIGH IN FAVOR OF  
9           FAIR USE, BUT THAT'S FOR YOU TO RESOLVE AND IT'S FOR YOU TO  
10          BALANCE THESE AND EVALUATE THEM.

11          AND WHEN IT COMES TO NONEXCLUSIVE, THE COURT HAS TOLD YOU,  
12          INSTRUCTION 56, THAT ONE OF THE POLICIES IS TO PERMIT LIMITED  
13          COPYING IN SPECIFIC CIRCUMSTANCES THAT AUTHORS REASONABLY  
14          EXPECT AND THAT ALLOW PRODUCTIVE USE OF THE WORK.

15          OKAY. LET'S GO OVER THAT AGAIN. PRODUCTIVE USE OF THE  
16          WORK MEANS INNOVATION. AND WHAT DO AUTHORS REASONABLY EXPECT?  
17          HEY, WE KNOW WHAT THIS AUTHOR EXPECTED, WE KNOW THIS AUTHOR  
18          EXPECTED, HAVING HEARD FROM MR. VOLPI AND HEARD FROM  
19          MR. GIANCARLO, AND HEARD FROM MR. KATHAIL, THEY EXPECTED PEOPLE  
20          TO USE THE CLI, THEY PROMOTED IT AS AN INDUSTRY STANDARD,  
21          BECAUSE IT WAS BETTER FOR THEIR CUSTOMERS AND BETTER FOR CISCO.

22          AND THAT'S BEEN PROVEN BEYOND ANY QUESTION. BEYOND ANY  
23          QUESTION. BETWEEN THE DOCUMENTS AND THE TESTIMONY, THAT'S WHAT  
24          THIS REASONABLE COPYRIGHT OWNER THOUGHT.

25          AND IF THERE WERE ANY DOUBT ABOUT IT, LET'S GO BACK ONE,

01:56:31 1 EVEN IN THE SO CALLED HUAWEI SETTLEMENT, EVEN THERE, THEY SAID  
01:56:37 2 COMMON TERMS AND COMMANDS, OKAY TO USE. COMMON ACRONYMS, OKAY  
01:56:41 3 TO USE. STANDARD-BASED TERMS, OKAY TO USE. RANGE OF OVERLAP  
01:56:46 4 10 TO 20 PERCENT, OKAY TO DO. NON PROTECTABLE ASPECTS, OKAY TO  
01:56:51 5 USE.

01:56:53 6 SO LADIES AND GENTLEMEN, I'VE CHECKED THE VERDICT FORM.  
01:56:56 7 THIS IS AGAIN, THIS IS SEPARATE AND APART FROM YOUR  
01:57:00 8 INFRINGEMENT ANALYSIS, IF YOU FIND NO INFRINGEMENT, YOU DON'T  
01:57:03 9 REACH FAIR USE. BUT THIS IS SOMETHING YOU LOOK AT EVEN IF YOU  
01:57:06 10 FIND THERE'S COPYRIGHT INFRINGEMENT BECAUSE FAIR USE TRUMPS IT  
01:57:11 11 IN THE STATUTE.

01:57:12 12 OKAY. LET'S SPEND A MINUTE ON PATENT INFRINGEMENT. THEY  
01:57:15 13 DIDN'T COME CLOSE TO PROVING PATENT INFRINGEMENT. NOT EVEN  
01:57:18 14 CLOSE.

01:57:19 15 NEXT SLIDE.

01:57:21 16 YOU REMEMBER I SHOWED YOU IN THE OPENING, THIS LITTLE  
01:57:23 17 HANDY DANDY GUIDE. WHAT IT MEANS IS, EVERY REQUIREMENT MUST BE  
01:57:27 18 MET. EVERY REQUIREMENT MUST BE MET. THAT'S IN JURY  
01:57:33 19 INSTRUCTION 74.

01:57:34 20 JUDGE FREEMAN HAS GIVEN US THE TEXT VERSION OF THIS, EVERY  
01:57:38 21 REQUIREMENT. AND YOU KNOW FROM MR. KRISHNAN'S PRESENTATION,  
01:57:43 22 THAT THERE ARE TWO REQUIREMENTS THAT ARE NOT MET, AT LEAST, IN  
01:57:46 23 THIS PATENT.

01:57:47 24 ONE IS THAT THE MANAGEMENT AGENTS DO NOT EXECUTE THE  
01:57:51 25 PRESCRIBED COMMANDS. AND THE SECOND IS THERE ISN'T A COMMAND

01:57:56 1 ACTION VALUE ON SIGNED TO EACH WORD OF A GENERIC COMMAND.

01:57:59 2 LET'S GO TO THE NEXT ONE.

01:58:01 3 THIS IS WHAT DR. JEFFAY PRESENTED. AND HE SAID ON THE  
01:58:07 4 RIGHT, THE MANAGEMENT PROGRAMS LISTED THERE, THEY EXECUTE THE  
01:58:11 5 COMMANDS, AND THAT'S INFRINGEMENT.

01:58:14 6 BUT MR. KRISHNAN ESTABLISHED, HE COULDN'T PROVE THAT WITH  
01:58:17 7 THE SOURCE CODE. WE ASKED HIM POINT BLANK, YOU NEVER SHOWED  
01:58:21 8 THE SPECIFIC SOURCE CODE TRACES THAT WOULD PROVE THAT, DID YOU?  
01:58:25 9 NO.

01:58:26 10 THAT'S CRITICAL. HE DIDN'T HAVE IT. INSTEAD, MR. CHASE  
01:58:30 11 CAME IN WITH THE SOURCE CODE AND SAID, THESE COMMANDS ARE NOT  
01:58:34 12 EXECUTED BY THE MANAGEMENT AGENTS, THEY ARE EXECUTED BY THE CLI  
01:58:38 13 ON THE LEFT. EXECUTED BY THE CLI ON THE LEFT.

01:58:42 14 SECOND ISSUE, NOT REALLY EVEN ADDRESSED THIS MORNING IS  
01:58:46 15 THAT WHEN A USER TYPES IN A GENERIC COMMAND, THAT'S A COMMAND  
01:58:50 16 TYPED BY A USER, THE PATENT REQUIRES THAT THERE BE AN ACTION  
01:58:54 17 VALUE ASSIGNED TO EVERY WORD. DR. JEFFAY AGREES WITH THAT.

01:59:00 18 WELL, GUESS WHAT? THAT'S NOT HOW ARISTA'S SYSTEM WORKS,  
01:59:03 19 AND THAT'S UNDISPUTED. THE PATENT REQUIRES EACH WORD OF THE  
01:59:07 20 COMMAND, GET TCP CONNECTION, TO BE ASSOCIATED -- ASSOCIATED TO  
01:59:13 21 BE ASSIGNED A COMMAND ACTION VALUE. THAT'S WHAT'S SHOWN ON THE  
01:59:19 22 TOP AND THAT'S WHAT THE CLAIM CONSTRUCTION REQUIRES. 1-TO-1.

01:59:22 23 IF THERE'S A WORD, IT'S GOT TO BE ASSIGNED A VALUE.  
01:59:25 24 THAT'S NOT HOW ARISTA WORKS, AND THERE'S NO DISPUTE ABOUT THIS,  
01:59:30 25 THE SO CALLED CONTEXT.STATE DOES NOT MEAN A THING.



01:59:33 1 DR. CHASE TESTIFIED THAT IN NO CIRCUMSTANCE IS A COMMAND  
01:59:38 2 ACTION VALUE ON SIGNED TO EVERY WORD. IN ARISTA'S SYSTEM  
01:59:42 3 THERE'S A VALUE ASSIGNED TO THE ENTIRE COMMAND, RIGHT? AND  
01:59:46 4 THEREFORE, IF YOU TYPE IF AN INVALID COMMAND, THEN NOTHING IS  
01:59:51 5 INVOKED, SOMETHING IS INVOKED, BECAUSE AGAIN, IN THE ARISTA  
01:59:55 6 SYSTEM, THEY DO IT DIFFERENTLY.

01:59:57 7 EITHER ONE OF THESE TWO FAILURES WOULD BE ENOUGH TO DEFEAT  
02:00:03 8 INFRINGEMENT. BUT THERE'S TWO. THEY ONLY REALLY ADDRESSED ONE  
02:00:06 9 THIS MORNING, AND NOT THE SECOND ONE. BUT AGAIN HERE, THE  
02:00:09 10 EXPERTS ARE CLEAR ON THE SECOND ONE THAT THAT'S HOW THE SYSTEM  
02:00:13 11 WORKS. IT DOESN'T MEET THE REQUIREMENTS SET FORTH BY THE  
02:00:16 12 COURT.

02:00:31 13 I THINK YOU KNOW HOW I FEEL ABOUT DAMAGES, HAVING LISTENED  
02:00:34 14 TO THE FIRST HOUR AND TEN MINUTES OF THIS, THAT PROBABLY IS  
02:00:37 15 CLEAR. THAT BECAUSE THERE'S NO INFRINGEMENT, AND BECAUSE  
02:00:41 16 THERE'S FAIR USE, AND BECAUSE THERE'S NO PATENT INFRINGEMENT,  
02:00:45 17 THERE'S NO DAMAGES DUE.

02:00:47 18 BUT OBVIOUSLY, THAT'S A DECISION THAT'S LEFT UP TO YOU AS  
02:00:50 19 JURORS IN OUR GREAT SYSTEM.

02:00:54 20 SO I WILL SAY A COUPLE THINGS ABOUT IT, WHICH IS ONE --  
02:00:57 21 CAN I HAVE THE NEXT SLIDE. WITH RESPECT TO THE COPYRIGHT CASE,  
02:01:01 22 IF YOU WERE TO FIND INFRINGEMENT, THE ONLY NUMBER THAT HAS ANY  
02:01:06 23 EVEN ARGUABLE SUPPORT IN THE EVIDENCE IS THIS \$2 MILLION FROM  
02:01:10 24 MS. ELSTEN, NOT THE \$331 MILLION NUMBER FOR 40-YEAR OLD  
02:01:15 25 TECHNOLOGY, COME ON, THAT'S CRAZY.

02:01:17 1 AND WHAT'S THE BIG DIFFERENCE? DR. CHEVALIER IS ASSIGNING  
02:01:22 2 CREDIT TO ALL OF MICROSOFT, FACEBOOK, GOOGLE, AND ALL THESE BIG  
02:01:28 3 GUYS, WHICH YOU HEARD FROM MR. SADANA, AND MR. SUMMERS AND JUST  
02:01:32 4 KIND OF OBVIOUS IN THE EVIDENCE, WHEN YOU ARE RUNNING A DATA  
02:01:36 5 CENTER WITH THOUSANDS AND THOUSANDS AND SOMETIMES MILLIONS OF  
02:01:41 6 SERVERS, YOU HAVE TO AUTOMATE.

02:01:43 7 SO IT MAKES LESS DIFFERENCE TO THEM WHAT THE CLI LOOKS  
02:01:46 8 LIKE. THEY MAY STILL USE IT, BUT IT'S NOT SOMETHING WHERE THEY  
02:01:49 9 ARE INSISTING THAT IT BE SOME FAMILIAR, COMMON CISCO-LIKE CLI.

02:01:55 10 THAT'S THE INDUSTRY MOVING AWAY FROM THAT. IF YOU LOOK  
02:01:58 11 JUST AT THOSE OLDER CUSTOMERS IN ENTERPRISE SHOPS THAT WANT TO  
02:02:02 12 KEEP USING IT, THAT'S THE ONLY NUMBER THAT MAKES ANY SENSE.

02:02:06 13 AND THE SAME IS TRUE ON THE DISGORGEMENT SIDE, IF YOU GET  
02:02:10 14 THERE, AND THAT IS, DR. CHEVALIER WASN'T EVEN WILLING TO POST A  
02:02:15 15 NUMBER, NOT WILLING TO POST A NUMBER. AND I'M NOT SAYING THIS  
02:02:17 16 NUMBER IS RIGHT, AND I DON'T THINK MS. ELSTEN IS SAYING IT'S  
02:02:21 17 RIGHT, BUT WHAT SHE'S SAYING IS IF YOU TAKE AWAY THE VALUE OF  
02:02:25 18 ALL THE OTHER THINGS IN THE DEVICE, THE HARDWARE THAT  
02:02:29 19 MR. HOLBROOK TALKED ABOUT AND MR. DUDA, THE EOS SOFTWARE WITH  
02:02:34 20 MILLIONS OF LINES OF ORIGINAL CODE, THE INTEGRATION THEY'VE  
02:02:39 21 DONE ABOUT THE LINUX KERNEL, IF YOU TAKE AWAY ALL THOSE OTHER  
02:02:43 22 FACTORS AND YOU TRY TO JUST FIND A VALUE AND YOU CAN ATTRIBUTE  
02:02:47 23 TO THE COMMANDS AT ISSUE, THAT'S THE VALUE THAT SHE POSTED.  
02:02:52 24 16.4 MILLION.

02:02:53 25 AGAIN, I'M NOT SAYING IT'S RIGHT, I'M SAYING IT'S THE ONLY

02:02:56 1 NUMBER WITH ANY EVEN CLOSE SUPPORT IN THE EVIDENCE.

02:03:01 2 SO AS JUDGE FREEMAN TOLD YOU, YOU SHOULD DECIDE THIS CASE  
02:03:06 3 BASED ON THE EVIDENCE. AND AS I'VE TRIED TO SHOW, I THINK THE  
02:03:10 4 EVIDENCE IS OVERWHELMING ON EACH OF THESE FOUR POINTS, THAT  
02:03:15 5 THIS SWITCH WAS BUILT INDEPENDENTLY AND IS NOT A COPY, THAT  
02:03:19 6 CISCO MADE A CONSCIENCE DECISION TO PROMOTE THE CLI AS INDUSTRY  
02:03:23 7 STANDARD, THAT COPYING UNPROTECTED, ROUTINE, NONORIGINAL  
02:03:29 8 ELEMENTS IS NOT INFRINGEMENT, AND THE USE OF THESE WAS A FAIR  
02:03:34 9 USE, ESPECIALLY IN LIGHT OF THE CONDUCT OF CISCO FOR YEARS IN  
02:03:40 10 THE MARKETPLACE.

02:03:41 11 I WOULD SAY ALSO THAT THE IMPORTANCE OF FAIR USE IS THAT  
02:03:45 12 IT TAKES INTO ACCOUNT THE PUBLIC INTEREST. AND THE PUBLIC  
02:03:47 13 INTEREST WE ARE TALKING ABOUT IS INNOVATION. INNOVATION IS  
02:03:51 14 CRITICAL IN OUR COMMUNITY ESPECIALLY IT'S ONE OF THE THING THAT  
02:03:54 15 IS SETS USA PART.

02:03:56 16 SO AS YOU DELIBERATE OVER THE EVIDENCE, I WOULD YOU ASK  
02:03:58 17 YOU TO KEEP IN MIND THE IMPORTANCE OF MAINTAINING A CLIMATE  
02:04:02 18 WHERE INNOVATION CAN HAPPEN. SOMEONE LIKE CISCO CAN'T CHANGE  
02:04:06 19 THE RULES AFTER BEING OUT THERE FOR YEARS, AND YEARS, AND YEARS  
02:04:09 20 SAYING WE COMPETE ON WHAT'S INSIDE THE BOX, NOT ON THE COMMON,  
02:04:13 21 OLD 40-YEAR OLD COMMAND LINE SYSTEM, IT'S NOT FAIR TO ANYONE TO  
02:04:18 22 TURN AROUND YEARS LATER AND SAY, NO, WE ARE GOING TO CHANGE THE  
02:04:21 23 RULES NOW, AND YOU, ARISTA, ALONE, ARE GOING TO BE THE ONE THAT  
02:04:24 24 HAS TO CHANGE.

02:04:25 25 THAT'S NOT FAIR. THAT'S NOT RIGHT. THAT'S WHAT FAIR USE

02:04:27 1 WAS INTENDED TO PROTECT. AND PRODUCTS LIKE THIS AND COMPANIES  
02:04:30 2 LIKE THIS AND CHANGE LIKE THIS IS WHAT WE SHOULD BE ENCOURAGING  
02:04:35 3 IN OUR COUNTRY, NOT DISCOURAGING, AS CISCO WOULD LIKE.

02:04:38 4 NOW I KNOW MR. NELSON WILL GET A CHANCE TO RESPOND. I  
02:04:41 5 KNOW THAT HE WILL POINT OUT SOMETHING I FORGOT, SOMETHING I  
02:04:44 6 DIDN'T MENTION, MAYBE SOMETHING HE SAYS I GOT WRONG, AND I'M  
02:04:49 7 COUNTING ON YOU TO REMEMBER THE KEY POINTS THAT WE HAVE BEEN  
02:04:52 8 PRESENTED, AND WE LOOK VERY MUCH FORWARD TO YOUR DELIBERATIONS  
02:04:55 9 AND VERDICT.

02:04:56 10 THANK YOU VERY MUCH, LADIES AND GENTLEMEN.

02:04:58 11 THE COURT: THANK YOU, MR. VAN NEST.

02:05:01 12 MR. VAN NEST: THANK YOU, YOUR HONOR.

02:05:05 13 THE COURT: MR. NELSON, I THINK WE WON'T NEED A  
02:05:07 14 BREAK, BUT I KNOW WE MAY WANT TO TAKE SOME THINGS AND MOVE THEM  
02:05:14 15 AROUND A LITTLE BIT.

02:05:42 16 **CLOSING ARGUMENTS BY MR. NELSON**

02:05:46 17 ALL RIGHT. GOOD AFTERNOON, EVERYBODY.

02:05:49 18 SO I'M NOT GOING TO RESPOND TO EVERY POINT, OBVIOUSLY I  
02:05:51 19 HAVE 20 MINUTES HERE, BUT I WANT TO RESPOND TO A FEW OF THE KEY  
02:05:55 20 THINGS BECAUSE I THINK IT'S IMPORTANT TO PUT THESE THINGS INTO  
02:05:58 21 CONTEXT.

02:05:59 22 AND ALSO REMEMBER WHAT THE LAWYERS SAY ARE NOT EVIDENCE.  
02:06:02 23 WHAT YOU HEARD THERE, RATHER THAN CITATIONS TO EXHIBITS, AS YOU  
02:06:05 24 HAVE, AS I DID, AFTER EXHIBIT, AFTER EXHIBIT, YOU HEARD A LOT  
02:06:08 25 OF TESTIMONY FROM MR. VAN NEST.